S. Hrg. 100-341

GAMING ACTIVITIES ON INDIAN RESERVATIONS AND LANDS

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 555

TO REGULATE GAMING ON INDIAN LANDS

AND

S. 1303

TO ESTABLISH FEDERAL STANDARDS AND REGULATIONS FOR THE CONDUCT OF GAMING ACTIVITIES ON INDIAN RESERVATIONS AND LANDS, AND FOR OTHER PURPOSES

JUNE 18, 1987
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GAMING ACTIVITIES ON INDIAN RESERVATIONS AND LANDS

THURSDAY, JUNE 18, 1987

U.S. Senate,
Select Committee on Indian Affairs,
Washington, DC.

The committee met, pursuant to notice, at 9:05 a.m., in room 628, Dirksen Senate Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye, Evans, Melcher, Burdick, McCain, and Murkowski.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII; CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The Chairman. The hearing will please come to order.

This morning we will hold a hearing on S. 555 and S. 1303, bills to regulate gaming on Indian lands.

These bills, though significantly different in several critical areas, both address the perceived need to provide a regulatory scheme that protects tribes and public, while at the same time assuring the integrity of tribal sovereignty.

Both bills envision a combined role for tribes and the Federal Government in regulating gaming.

S. 555 and S. 1303 differ considerably in their treatment of class III gaming, the term used to refer to horse and dog racing, jai alai, and casino gambling. In S. 555, which I introduced prior to the Supreme Court's decision in the *Cabazon* case, class III would be banned unless the tribe requests the Secretary to consent to a transfer of jurisdiction to a State for the regulation and enforcement of State laws governing class III gaming.

Under the second bill, S. 1303, which Senator McCain introduced on June 2, and which I cosponsored, class III would be regulated much like class II, with a role for both tribes and the Federal Government, but with the addition that State laws governing class III games would be incorporated into tribal and Federal law.

This approach is apparently preferred by tribes and is not inconsistent with recent court decisions in the *Cabazon* and *Santa Ana* cases.

We will hear from many witnesses today who will no doubt warn us of the dangers associated with conducting gaming activities. What we need to be thinking about are ways to prevent the dangers from happening on Indian lands, while at the same time protecting the rights of Indians and Indian tribes and nations to regulate their own governments, just as State and local governments do. This will be a difficult task, but the witnesses today will hopefully give all of us a better understanding of the problems and shed some light on workable and acceptable solutions.

As a personal matter, I am opposing to gaming. I think it attracts bad elements in society, and it also leads to social and economic ills among people who can least afford to gamble.

Given those views, my concern has been and continues to be how to allow tribes to engage in gaming as a revenue-building resource just as State and local governments do, while assuring that tribes have the resources necessary to protect their members, the public, and the tribes as governments from the dangers inherent in cash businesses that are so attractive to unscrupulous, criminal elements in our society.

[The text of S. 555 and S. 1303 follows:]

II

00TH CONGRESS
1ST SESSION

S. 555

To regulate gaming on Indian lands.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 19, 1987

Mr. INOUYE (for himself, Mr. EVANS, and Mr. DASCHLE) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

A BILL

To regulate gaming on Indian lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Gaming Regulatory Act".

FINDINGS

SEC. 2. (a) The Congress finds that—

(1) numerous Indian tribes have become engaged in or have licensed gaming activities on Indian lands as a means of generating tribal governmental revenue;

(2) States have no criminal jurisdiction over Indians in Indian country except to the extent that the Congress has provided by legislation that the States,

rather than the Federal Government, should exercise jurisdiction over a particular subject matter;

(3) the Federal and tribal governments exercise criminal jurisdiction over crimes committed in Indian country, except in certain special situations generally not related to gambling;

(4) Federal law sometimes assimilates the criminal laws of the States when there is no general Federal criminal statute on point;

(5) several Federal courts have held that State criminal laws are assimilated by section 13 of title 18, United States Code for enforcement by the Federal Government in Indian country, that State gambling enforcement statutes are regulatory laws which are not assimilated by section 13 of title 18, United States Code, or made applicable to Indians or Indian tribes by Public Law 83–280; and, consequently, that the Indian tribes have the exclusive right to regulate gaming which is not prohibited by Federal law and which is conducted in a State which does not, as a matter of criminal law and public policy, prohibit such gaming;

(6) Federal courts have held that section 2103 of the Revised Statutes, as amended, (25 U.S.C. 81) requires Secretarial review of management contracts

dealing with Indian gaming, but does not provide standards for approval of such contracts;

(7) existing Federal law does not provide clear standards or regulations for the conduct of gaming on Indian lands; and

(8) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government.

DECLARATION OF POLICY

SEC. 3. The purpose of this Act is—

(1) to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments;

(2) to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players; and

(3) to declare that the establishment of independent Federal regulatory authority for gaming on Indian lands, the establishment of Federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to

meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue.

DEFINITIONS

SEC. 4. For purposes of this Act—

(1) The term "Attorney General" means the Attorney General of the United States.

(2) The term "Chairman" means the Chairman of the National Indian Gaming Commission.

(3) The term "Commission" means the National Indian Gaming Commission established pursuant to section 5 of this Act.

(4) The term "Indian lands" means—

(A) all lands within the limits of any Indian reservation; and

(B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians which is recognized as eligible by the Secretary for the special programs and services

provided by the United States to Indians because of their status as Indians and is recognized as possessing powers of self-government.

(6) The term "gaming" means to deal, operate, carry on, conduct, or maintain for play any banking or percentage game of chance played for money, property, credit, or any representative value.

(7) The term "class I gaming" means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of or in connection with tribal ceremonies or celebrations.

(8) The term "class II gaming" means games of chance commonly known as bingo or lotto which are played for prizes, including monetary prizes, with cards bearing numbers or other designations, the holder covering such numbers or designations as objects, similarly numbered or designated, are drawn from a receptacle or electronically determined and the game being won by the person first covering a previously designated arrangement of numbers or designations on such card, and shall also include, where otherwise legal, pull-tabs, punch boards, tip jars, and other similar games. Class II gaming may include electronic or electromechanical facsimiles of the foregoing games, where devices of

such types are otherwise legal under State law. Within sixty days of the date of enactment of this Act, the Secretary shall identify and prepare a list of each tribally owned card game operated as of January 1, 1987, on Indian lands in those States where such card gaming is otherwise legal, and shall publish such a list in the Federal Register. In accordance with section 13, if the tribal ordinance governing the operation of such identified Indian card game complies with section 11 of this Act and any management contract pertaining to such game complies with section 12 of this Act, such card game shall be deemed a class II gaming activity for purposes of regulation under this Act.

(9) The term "class III gaming" means all other forms of gaming that are not class I gaming or class II gaming.

(10) The term "net revenues" means gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses including management fees.

(11) The term "Secretary" means the Secretary of the Interior.

NATIONAL INDIAN GAMING COMMISSION

SEC. 5. (a) There is established within the Department of the Interior a Commission to be known as the National Indian Gaming Commission.

(b)(1) The Commission shall be composed of five full-time members who shall be appointed as follows:

(A) a Chairman, who shall be appointed by the President with the advice and consent of the Senate; and

(B) four associate members who shall be appointed by the Secretary of the Interior.

(2)(A) the Department of Justice shall conduct a background investigation on any person considered for appointment to the Commission.

(B) The Secretary shall publish in the Federal Register the name and other information the Secretary deems pertinent regarding a nominee for membership on the Commission and shall allow a period of not less than thirty days for receipt of public comment.

(3) Not more than three members of the Commission shall be of the same political party. At least two members of the Commission shall be enrolled members of a federally recognized tribe.

(4) The members of the Commission shall be appointed for three year terms, except that the initial terms of the Commission shall be staggered so that—

(A) three members, including the Chairman, shall serve terms of three years; and

(B) two members shall serve terms of two years.

(5) No individual shall be eligible for any appointment to, or to continue service on, the Commission, who—

(A) has been convicted of a felony or gaming offense;

(B) has any financial interest in, or management responsibility for, any gaming activity; or

(C) has a financial interest in, or management responsibility for, any management contract approved pursuant to section 12 of this Act.

(6) During his term of office, a Commissioner may only be removed by the appointing authority for neglect of duty, or malfeasance in office, or for other good cause shown.

(c) Vacancies occurring on the Commission shall be filled in the same manner as the original appointment. A member may serve after the expiration of his term until his successor has been appointed, unless he has been removed for cause under subsection (b)(6).

(d) Three members of the Commission, at least one of which is the Chairman or Vice Chairman, shall constitute a quorum.

(e) The Commission shall select, by majority vote, one of the members to serve as Vice Chairman who shall serve as Chairman during meetings of the Commission in the absence of the Chairman.

(f) The Commission shall meet at the call of the Chairman or a majority of its members.

(g)(1) The Chairman of the Commission shall be paid at a rate equal to that of level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(2) The associate members of the Commission shall each be paid at a rate equal to that of level V of the Executive Schedule under section 5316 of title 5, United States Code.

(3) All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

POWERS OF THE CHAIRMAN

SEC. 6. (a) The Chairman shall have power, subject to an appeal to the Commission, to—

(1) issue orders of temporary closure of gaming activities as provided in section 14(b);

(2) levy and collect civil fines as provided in section 14(a);

(3) approve tribal ordinances or resolutions regulating class II gaming as provided in section 11(b); and

(4) approve management contracts for class II gaming as provided in section 12.

(b) The Chairman shall have such other powers as may be delegated by the Commission.

POWERS OF THE COMMISSION

SEC. 7. (a) The Commission—

(1) shall monitor Indian gaming activities on a continuing basis;

(2) shall inspect and examine all premises where Indian gaming is conducted;

(3) shall conduct or cause to be conducted such background investigations as may be necessary;

(4) may demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting gross revenues of a gaming activity and all other matters necessary to the enforcement of this Act;

(5) may use the United States mail in the same manner and under the same conditions as other departments and agencies of the United States;

(6) may procure supplies, services, and property by contract in accordance with applicable Federal laws and regulations;

(7) may enter into contracts with Federal, State, tribal and private entities for activities necessary to the discharge of the duties of the Commission and, to the extent feasible, contract the enforcement of the Commission's regulations with the Indian tribes;

(8) may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission deems appropriate;

(9) may administer oaths or affirmations to witnesses appearing before the Commission; and

(10) shall promulgate such regulations and guidelines as it deems appropriate to implement the provisions of this Act.

(b) The Commission shall submit a report with minority views, if any, to the Congress on December 31, 1988, and every two years thereafter. The report shall include information on—

(1) whether the associate commissioners should continue as full or part-time officials;

(2) funding, including income and expenses, of the Commission;

(3) recommendations for amendments to the Act; and

(4) any other matter deemed appropriate by the Commission.

COMMISSION STAFFING

SEC. 8. (a) The Chairman shall appoint a General Counsel to the Commission who shall be paid at the annual rate of basic pay payable for GS–18 of the General Schedule under section 5332 of title 5, United States Code.

(b) The Chairman shall appoint and supervise other staff on the Commission without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Such staff shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS–17 of the General Schedule under section 5332 of that title.

(c) the Chairman may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS–18 of the General Service.

(d) Upon the request of the Chairman, the head of any Federal agency is authorized to detail any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this Act, unless otherwise prohibited by law.

(e) The Secretary or Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

COMMISSION—ACCESS TO INFORMATION

SEC. 9. The Commission may secure from any department or agency of the United States information necessary to enable it to carry out this Act. Upon the request of the Chairman, the head of such department or agency shall furnish such information to the Commission, unless otherwise prohibited by law.

INTERIM AUTHORITY TO REGULATE GAMING

SEC. 10. The Secretary shall continue to exercise those authorities currently vested in him relating to supervision of Indian gaming until such time as the Commission is organized and promulgates regulations. The Secretary shall provide staff and support assistance to facilitate an orderly transition to regulation of Indian gaming by the Commission.

TRIBAL GAMING ORDINANCES

SEC. 11. (a)(1) Class I gaming on Indian lands is within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this Act.

(2) Any Indian gaming that is defined as class II gaming on Indian lands shall continue to be within the jurisdiction of the Indian tribes, but shall be subject to the provisions of this Act, if such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise prohibited by Federal law).

(b)(1) An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction, if—

(A) such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise prohibited by Federal law), and

(B) the governing body of the Indian tribe adopts an ordinance or resolution which is approved by the Chairman pursuant to this Act.

A separate license shall be required for each place, facility, or location on Indian lands at which class II gaming is conducted.

(2) The Chairman shall approve any tribal ordinance or resolution concerning the conduct, or regulation of class II gaming on the Indian lands of the Indian tribe if such ordinance or resolution provides that—

(A) except as provided in paragraph (4), the Indian tribe shall have the sole proprietary interest and responsibility for the conduct of any gaming activity;

(B) net revenues from any tribal gaming are not to be used for purposes other than—

(i) to fund tribal government operations or programs;

(ii) to provide for the general welfare of the Indian tribe and its members;

(iii) to promote tribal economic development;

(iv) to donate to charitable organizations; or

(v) to help fund operations of local government agencies;

(C) annual outside independent audits of the gaming will be obtained by the Indian tribe and made available to the Commission;

(D) all contracts for supplies, services, or concessions for a contract amount in excess of $25,000 annually (except contracts for professional legal or accounting services) relating to such gaming shall be subject to such independent audits;

(E) the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety; and

(F) an adequate system which—

(i) ensures that background investigations are conducted on the primary management officials and key employees of the gaming enterprise and that oversight of such officials and their management is conducted on an ongoing basis; and

(ii) includes—

(I) tribal licenses for primary management officials and key employees of the gaming enterprise with prompt notification to the Commission of the issuance of such licenses;

(II) a standard whereby any person whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming shall not be eligible for employment; and

(III) notification to the Commission by the Indian tribe before the issuance of such license of the results of such background check.

(3) Net revenues from any tribal gaming may be used to make per capita payments to tribal members only if—

(A) the Indian tribe has prepared a plan to allocate revenues to uses authorized by paragraph (2)(B);

(B) the plan is approved by the Secretary as adequate, particularly with respect to uses described in clause (i) or (iii) of paragraph (2)(B); and

(C) those payments are subject to Federal taxation and tribes notify members of such tax liability when payments are made.

(4)(A) A tribal ordinance or resolution may provide for the licensing or regulation of class II gaming activities owned by individuals or entities other than the Indian tribe and conducted on Indian lands, except that the tribal licensing requirements shall be at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State within which such Indian lands are located. No individual or entity, other than the Indian tribe, shall be eligible to receive a tribal license to own a class II gaming activity within the Indian tribe's jurisdiction if such individual or entity would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the State.

(B)(i) The provisions of subparagraph (A) of this paragraph and the provisions of subparagraphs (A) and (B) of paragraph (2) shall not bar the continued operation of an individually owned class II gaming operation that was operating on September 1, 1986, if—

(I) such gaming operation is licensed and regulated by an Indian tribe pursuant to an ordinance reviewed and approved by the Commission in accordance with section 13 of the Act,

(II) income to the Indian tribe from such gaming is used only for the purposes described in paragraph (2)(B) of this subsection,

(III) not less than 60 percent of the net revenues is income to the Indian tribe, and

(IV) the owner of such gaming operation pays an appropriate assessment to the National Indian Gaming Commission under section 18(a)(1) for regulation of such gaming.

(ii) The exemption from the application of this subsection provided under this subparagraph may not be transferred to any person or entity and shall remain in effect only so long as the gaming activity remains within the same nature and scope as operated on the date of enactment of this Act.

(iii) Within sixty days of the date of enactment of this Act, the Secretary shall prepare a list of each individually owned gaming operation to which clause (i) applies and shall publish such list in the Federal Register.

(c)(1) The Commission may consult with appropriate law enforcement officials concerning gaming licenses issued by an Indian tribe and shall have thirty days to notify the Indian tribe of any objections to issuance of such license.

(2) If, after the issuance of a gaming license, reliable information is received from the Commission indicating that a primary management official or key employee does not meet the standard established under subsection (b)(2)(F)(ii)(II), the Indian tribe shall suspend such license and, after notice and hearing, may revoke such license.

(d)(1) Except as provided in paragraph (2) of this subsection, class III gaming shall be unlawful on any Indian lands under section 1166 of title 18, United States Code.

(2)(A) A gaming activity on Indian lands that is otherwise legal within the State where such lands are located may be exempt from the operation of paragraph (1) of this subsection where the Indian tribe requests the Secretary to consent to the transfer of all civil and criminal jurisdiction, except for taxing authority, pertaining to the licensing and regulation of gaming over the proposed gaming enterprise to the State within which such gaming enterprise is to be located and the Secretary so consents. Such transfer shall provide the State with the authority to make appropriate and reasonable assessments of the Indian tribe or management contractor, as appropriate, to compensate such State for all reasonable costs incurred by it for investigating, licensing and regulating the gaming enterprise, but may not exceed the costs attributed to the regulation of other similar gaming enterprises operated by nontribal licensees within such State. If a State assesses any charge, commission, fee, or tax on a non-Indian parimutuel gaming enterprise in excess of the cost of regulating such an enterprise, a class III tribal parimutuel gaming enterprise shall not be liable for such excess charge, commission, fee, or tax so long as the Indian tribe uses the funds retained for purposes limited to those described in subsection (b)(2)(B); but the share of parimutuel pools returned to the bettor at Indian gaming enterprises shall not exceed the percentage share returned to bettors at non-Indian gaming enterprises of a similar nature.

(B) The Secretary shall approve gaming jurisdictional transfer under subparagraph (A) where the Commission certifies—

(i) that the Indian tribe's authorizing resolution or ordinance conforms to the requirements of subparagraphs (A) and (B) of subsection (b)(2);

(ii) that any management contract conforms to section 12; and

(iii) that the State within which such gaming enterprise is proposed to be established has agreed to such jurisdictional transfer.

(C) The Secretary shall cause to be published in the Federal Register a notice of consent to the transfer of jurisdiction under subparagraph (A). Such transfer shall be effective sixty days after publication and shall terminate as of the date such gaming enterprise ceases to operate. In the event of a cessation of operation such transfer of jurisdiction shall remain in full force and effect as to any activity which occurs prior to such cessation.

(D) In accordance with the provisions of section 1166(d) of title 18, United States Code, prosecution and enforcement pursuant to this subsection shall be within the appropriate courts of the respective State.

(E) The provisions of section 5 of the Act of January 2, 1951 (64 Stat. 1135; 15 U.S.C. 1175) shall not apply to any gaming conducted under this subsection.

(3) For purposes of this subsection, any regulation or authority exercised by a State under this subsection, including issuance of a license, shall be exercised in the same manner and to the same extent as it is exercised on non-Indian lands within the State.

(4) For purposes of this subsection, an Indian tribe shall be considered to be a person and shall have the same rights and remedies that any person or citizen of the United States has, and any State or Federal court of competent jurisdiction shall have jurisdiction and authority to issue such orders as may be necessary to enforce the rights granted under this subsection.

(e) For purposes of this section, not later than ninety days after the submission of any tribal gaming ordinance or resolution, the Chairman shall approve such ordinance or resolution if it meets the requirements of this section. Any such ordinance or resolution not acted upon at the end of that ninety day period shall be deemed to have been approved by the Chairman, but only to the extent such ordinance or resolution is consistent with the provisions of this Act.

MANAGEMENT CONTRACTS

SEC. 12. (a)(1) Subject to the approval of the Chairman, an Indian tribe may enter into a management contract for the operation and management of a class II gaming activity that the Indian tribe may engage in under section 11(b)(1), but, before approving such contract, the Chairman shall require and obtain the following information:

(A) the name, address, and other additional pertinent background information on each person or entity (including individuals comprising such entity) having a financial interest in, or management responsibility for, such contract, or, in the case of a corporation, those individuals who serve on the board of directors of such corporation and each of its stockholders who hold (directly or indirectly) 10 percent or more of its issued and outstanding stock;

(B) a description of any previous experience that each person listed pursuant to subparagraph (A) has had with other gaming contracts with Indian tribes or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency with which such person has had a contract relating to gaming; and

(C) a complete financial statement of each person listed pursuant to subparagraph (A).

(2) Any person listed pursuant to paragraph (1)(A) shall be required to respond to such written or oral questions that the Chairman may propound in accordance with his responsibilities under this section.

(b) The Chairman may approve any management contract entered into pursuant to this section only if he determines that it provides at least—

(1) for adequate accounting procedures that are maintained, and for verifiable financial reports that are prepared, by or for the tribal governing body on a monthly basis;

(2) for access to the daily operations of the gaming to appropriate tribal officials who shall also have a right to verify the daily gross revenues and income made from any such tribal gaming activity;

(3) for a minimum guaranteed payment to the Indian tribe that has preference over the retirement of development and construction costs;

(4) for an agreed ceiling for the repayment of development and construction costs;

(5) for a contract term not to exceed five years; and

(6) for grounds and mechanisms for terminating such contract, but actual contract termination shall not require the approval of the Commission.

(c) The Chairman may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity if he determines that such percentage fee is reasonable in light of surrounding circumstances, but in no event shall such fee exceed 30 percent of the net revenues.

(d) Not later than one hundred and eighty days after the submission of a contract, the Chairman shall approve or disapprove such contract on its merits. The Chairman may extend the one hundred and eighty-day period by not more than ninety days if the Chairman notifies the Indian tribe in writing of the reason for the extension. The Indian tribe may bring an action in a United States district court to compel action by the Chairman if a contract has not been approved or disapproved within the period required by this subsection.

(e) The Chairman shall not approve any contract if he determines that—

(1) any person listed pursuant to subsection (a)(1)(A) of this section—

(A) is an elected member of the governing body of the Indian tribe which is the party to the management contract;

(B) has been or subsequently is convicted of any felony or gaming offense;

(C) has knowingly and willfully provided materially important false statements or information to the Commission or the Indian tribe pursuant to this Act or has refused to respond to questions propounded pursuant to subsection (a)(2); or

(D) has been determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto;

(2) the management contractor has, or has attempted to, unduly interfere or influence for its gain or advantage any decision or process of tribal government relating to the gaming activity;

(3) the management contractor has deliberately or substantially failed to comply with the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved pursuant to this Act; or

(4) a trustee, exercising the skill and diligence that a trustee is commonly held to, would not approve the contract.

(f) The Chairman, after notice and hearing, shall have the authority to require appropriate contract modifications or may void any contract if he subsequently determines that any of the provisions of this section have been violated.

(g) No management contract for the operation and management of a gaming activity regulated by this Act shall transfer or, in any other manner, convey any interest in land or other real property, unless specific statutory authority exists and unless clearly specified in writing in said contract.

(h) The authority of the Secretary under section 2103 of the Revised Statutes (25 U.S.C. 81), relating to management contracts regulated pursuant to this Act, is hereby transferred to the Commission.

(i) The Commission shall require a potential contractor to pay a fee to cover the cost of the investigation necessary to reach a determination required in subsection (e) of this section.

REVIEW OF EXISTING ORDINANCES AND CONTRACTS

SEC. 13. (a) As soon as practicable after the organization of the Commission, the Chairman shall notify each Indian tribe or management contractor who, prior to the enactment of this Act, adopted an ordinance or resolution authorizing class II gaming or entered into a management contract, that such ordinance, resolution, or contract, including all collateral agreements, must be submitted for his review within sixty days of such notification. Any activity conducted under such ordinance, resolution, contract, or agreement shall be valid under this Act, or any amendment made by this Act, unless disapproved under this section.

(b)(1) Within ninety days after the submission of an ordinance or resolution authorizing class II gaming pursuant to subsection (a), the Chairman shall review such ordinance or resolution to determine if it conforms to the requirements of section 11(b) of this Act.

(2) If the Chairman determines that an ordinance or resolution submitted under subsection (a) conforms to the requirements of section 11(b), he shall approve it.

(3) If the Chairman determines that an ordinance or resolution submitted under subsection (a) does not conform to the requirements of section 11(b), he shall provide written notification of necessary modifications to the Indian tribe which shall have not more than one hundred and twenty days to bring such ordinance or resolution into compliance.

(c)(1) Within one hundred and eighty days after the submission of a management contract, including all collateral agreements, pursuant to subsection (a), the Chairman shall subject such contract to the requirements and process of section 12 of this Act.

(2) If the Chairman determines, at the end of such period, that a contract submitted under subsection (a) and the management contractor meet the requirements of section 12, he shall approve it.

(3) If the Chairman determines, at the end of such period, that a contract submitted under subsection (a), or the management contractor under a contract submitted under subsection (a), does not meet the requirements of section 12, the Chairman shall provide written notification to the parties to such contract of necessary modifications and the parties shall have not more than one hundred and twenty days to come into compliance. If a management contract has been approved by the Secretary prior to the date of enactment of this Act, the parties shall have not more than one hundred and eighty days after notification of necessary modifications to come into compliance.

CIVIL PENALTIES

SEC. 14. (a)(1) Subject to such regulations as may be adopted by the Commission, the Chairman shall have authority to levy and collect appropriate civil fines, not to exceed $25,000 per violation, against the tribal operator of an Indian game or a management contractor engaged in gaming for any violation of any provision of this Act, any regulation prescribed by the Commission pursuant to this Act, or tribal regulations, ordinances, or resolutions approved under section 11 or 13 of this Act. Fines collected pursuant to this section shall be utilized by the Commission to defray its operating expenses.

(2) The Commission shall, by regulation, provide an opportunity for an appeal and hearing before the Commission on fines levied and collected by the Chairman.

(3) Whenever the Commission has reason to believe that the tribal operator of an Indian game or a management contractor engaged in activities regulated by this Act, by regulations prescribed under this Act, or by tribal regulations, ordinances, or resolutions, approved under section 11 or 13 of this Act that may result in the imposition of a fine under subsection (a)(1), the permanent closure of such game, or the modification or termination of any management contract, the Commission shall provide such tribal operator or management contractor with a written complaint stating the acts or omissions which form the basis for such belief and the action or choice of action being considered by the Commission. The allegation shall be set forth in ordinary and concise language and must specify the statutory or regulatory provisions alleged to have been violated, but may not consist merely of allegations stated in statutory or regulatory language.

(b)(1) The Chairman shall have power to order temporary closure of an Indian game for substantial violation of the provisions of this Act, of regulations prescribed by the Commission pursuant to this Act, or of tribal regulations, ordinances, or resolutions approved under section 11 or 13 of this Act.

(2) Not later than thirty days after the issuance by the Chairman of an order of temporary closure, the Indian tribe or management contractor involved shall have a right to a hearing before the Commission to determine whether such order should be made permanent or dissolved. Not later than sixty days following such hearing, the Commission shall, by a vote of not less than three of its members, decided whether to order a permanent closure of the gaming operation.

(c) A decision of the Commission to give final approval of a fine levied by the Chairman or to order a permanent closure pursuant to this section shall be appealable to the appropriate Federal district court pursuant to chapter 7 of title 5, United States Code.

(d) Nothing in this Act precludes an Indian tribe from exercising regulatory authority provided under tribal law over a gaming establishment within the Indian tribe's jurisdiction if such regulation is consistent with this Act or with any rules or regulations adopted by the Commission.

JUDICIAL REVIEW

SEC. 15. Decisions made by the Commission pursuant to sections 11, 12, 13, and 14 shall be final agency decisions for purposes of appeal to the appropriate Federal district court pursuant to chapter 7 of title 5, United States Code.

SUBPOENA AND DEPOSITION AUTHORITY

SEC. 16. (a) By a vote of not less than three members, the Commission shall have the power to require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under consideration or investigation. Witnesses so summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(b) The attendance of witnesses and the production of books, papers, and documents, may be required from any place in the United States at any designated place of hearing. The Commission may request the Secretary to request the Attorney General to bring an action to enforce any subpoena under this section.

(c) Any court of the United States within the jurisdiction of which an injury is carried on may, in case of contumacy or refusal to obey a subpoena to any reason, issue an order requiring such person to appear before the Commission (and produce books, papers, or documents as so ordered) and give evidence concerning the matter in question and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) A Commissioner may order testimony to be taken by deposition in any proceeding or investigation pending before the Commission at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths. Reasonable notice must first be given to the Commission in writing by the party or his attorney proposing to take such deposition, and, in cases in which a Commissioner proposes to take a deposition, reasonable notice must be given. The notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Commission, as hereinbefore provided.

(e) Every person deposing as herein provided shall be cautioned and shall be required to swear (or affirm, if he so requests) to testify to the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent. All depositions shall be promptly filed with the Commission.

(f) Witnesses whose depositions are taken as authorized in this section, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

INVESTIGATIVE POWERS

SEC. 17. (a) Except as provided in subsection (b), the Commission shall preserve any and all information received pursuant to this Act as confidential pursuant to the provisions of paragraphs (4) and (7) of section 552(b) of title 5, United States Code.

(b) The Commission may, when such information indicates a violation of Federal, State, or tribal statutes, ordinances, or resolutions, provide such information, to the appropriate law enforcement officials.

(c) The Attorney General of the United States is authorized to investigate activities associated with gaming authorized by this Act which may be a violation of Federal law, including but not limited to section 13 of title 18, United States Code (Assimilative Crimes Act), section 1152 of such title (General Crimes Act), section 1153 of such title (Major Crimes Act), and section 1163 of such title relating to embezzlement and theft from tribal organizations. The Attorney General is authorized to enforce such laws, or assist in the enforcement of such laws, upon evidence of violation as a matter of Federal law, or upon the referral of information by the Commission pursuant to subsection (b).

COMMISSION FUNDING

SEC. 18. (a)(1) The Commission shall establish a schedule of fees to be paid annually by each tribal gaming activity to the Commission. Such fees shall not be less than one-half of 1 percent nor more than 2½ percent of the first $750,000, and not more than 5 percent of amounts in excess thereof, of the gross revenues from each activity regulated by this Act.

(2) The Commission, by a vote of not less than three of its members, shall annually adopt the rate of assessment authorized by this section which shall be payable to the Commission on a quarterly basis.

(3) Failure to pay the assessment made under this section shall, subject to the regulations of the Commission, be grounds for revocation of any approval of license of the Commission required under this Act for the operation of tribal gaming.

(4) To the extent that funds derived from assessments made under this section are not expended or committed at the end of the budget year, such surplus funds shall be credited to each gaming activity on a pro rata basis against the assessment made under this section for the succeeding year.

(5) For purposes of this section, gross revenues shall constitute the annual total wagered moneys less any amounts paid out as prizes or paid for prizes awarded and less allowance for amortization of capital expenditures for structures.

(b)(1) The Commission, in coordination with the Secretary and in conjunction with the fiscal year of the United States, shall adopt an annual budget for the expenses and operation of the Commission.

(2) The budget of the Commission may include a request for appropriations, as authorized by section 19, in an amount equal the amount of funds derived from assessments authorized by subsection (a) for the fiscal year preceding the fiscal year for which the appropriation request is made.

(3) The request for appropriations pursuant to paragraph (2) shall be subject to the approval of the Secretary and shall be included as a part of the budget request of the Department of the Interior.

(c) There is established in the Treasury of the United States a special fund into which all fees collected under this section shall be deposited and used to pay the expenses of the Commission, as limited by subsection (a) of this section, in such amounts and to the extent provided in appropriations acts.

AUTHORIZATION OF APPROPRIATIONS

SEC. 19. (a) Subject to the provisions of section 18, there is hereby authorized to be appropriated such sums as may be necessary for the operation of the Commission.

(b) Notwithstanding the provisions of section 18, there is hereby authorized to be appropriated not to exceed $2,000,000 to fund the operation of the Commission for the first fiscal year after the date of enactment of this Act.

GAMING ON LANDS ACQUIRED AFTER ENACTMENT OF THIS ACT

SEC. 20. (a) Except as provided in subsection (b), gaming regulated by this Act shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after the date of enactment of this Act unless—

(1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on the date of enactment of this Act; or

(2) the Indian tribe has no reservation on the date of enactment of this Act and—

(A) such lands are located in Oklahoma and—

(i) are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary, or

(ii) are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma; or

(B) such lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such tribe is presently located.

(b) Subsection (a) will not apply when—

(1) the Secretary, after consultation with the Indian tribe and appropriate state and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; or

(2) lands are taken into trust as part of—

(A) a settlement of a land claim,

(B) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgement process, or

(C) the restoration of lands of an Indian tribe that is restored to Federal recognition.

(c) Nothing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust.

(d) Provisions of the Internal Revenue Code of 1986, concerning the taxation and the reporting and withholding of taxes with respect to gambling or wagering operations shall apply to Indian gaming operations conducted pursuant to this Act the same as they apply to State operations.

DISSEMINATION OF INFORMATION

SEC. 21. Consistent with the requirements of this Act, sections 1301, 1302, 1303 and 1304 of title 18, United States Code, shall not apply to any gaming conducted by an Indian tribe pursuant to this Act.

SEVERABILITY

SEC. 22. In the event that any section or provision of this Act, or amendment made by this Act, is held invalid, it is the intent of Congress that the remaining sections or provisions of this Act, and amendments made by this Act, shall continue in full force and effect.

CRIMINAL PENALTIES

SEC. 23. Chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following new sections:

"§ 1166. Gambling in Indian country

"(a) Except as provided in subsection (c), all State laws pertaining to the licensing, regulation, or prohibition of gambling, including but not limited to criminal sanctions applicable thereto, shall apply on Indian lands in the same manner and to the same extent as such laws apply elsewhere in the State.

"(b) Whoever on Indian lands is guilty of any act or omission involving gambling, whether or not conducted or sanctioned by an Indian tribe, which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State in which the act or omission occurred, under the laws governing the licensing, regulation, or prohibition of gambling in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

"(c) For the purpose of this section, the term 'gambling' does not include Indian class I gaming or class II gaming regulated by the Indian Gaming Regulatory Act.

"(d) The United States shall have exclusive jurisdiction over criminal prosecutions of violations of State gambling laws that are made applicable under this section to Indian lands, unless an Indian tribe pursuant to section 11(d) of the Indian Gaming Regulatory Act, or any other provision of Federal law, has consented to the transfer to the State of criminal jurisdiction with respect to gambling on the Indian tribe's lands.

"§ 1167. Theft from gaming establishments on Indian lands

"(a) Whoever abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any moneys, funds, or other property of a value of $1,000 or less belonging to an establishment licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian Gaming Commission shall be fined not more than

$100,000 or be imprisoned for not more than one year, or both.

"(b) Whoever abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any moneys, funds, or other property of a value in excess of $1,000 belonging to a gaming establishment licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian Gaming Commission shall be fined not more than $250,000, or imprisoned for not more than ten years, or both.

"§ 1168. Theft by officers or employers of gaming establishments on Indian lands

"(a) Whoever, being an officer, employee, or individual licensee of a gaming establishment licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian Gaming Commission, embezzles, abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any moneys, funds, assets, or other property of such establishment of a value of $1,000 or less shall be fined not more than $250,000 and be imprisoned for not more than five years, or both;

"(b) Whoever, being an officer, employee, or individual licensee of a gaming establishment licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian Gaming Commission, embezzles, abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any moneys, funds, assets, or other property of such establishment of a value in excess of $1,000 shall be fined not more than $100,000,000 or imprisoned for not more than twenty years, or both.".

CONFORMING AMENDMENT

SEC. 24. The table of contents for chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following:

"1166. Gambling in Indian country.
"1167. Theft from gaming establishments on Indian lands.
"1168. Theft by officers or employees of gaming establishments on Indian lands.".

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II

100TH CONGRESS
1ST SESSION

S. 1303

To establish Federal standards and regulations for the conduct of gaming activities on Indian reservations and lands, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 2, 1987

Mr. MCCAIN (for himself, Mr. INOUYE, and Mr. EVANS) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

A BILL

To establish Federal standards and regulations for the conduct of gaming activities on Indian reservations and lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Gaming Regulatory Act".

SEC. 2. The Congress finds that—

(1) numerous Indian tribes have become engaged in or have licensed gaming activities on Indian lands as a means of generating tribal governmental revenue;

(2) Indian tribes have the exclusive right to regulate gaming activity on Indian lands which is not spe-

cifically prohibited by Federal law and which is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity;

(3) Federal courts have held that section 2103 of the Revised Statutes, as amended (25 U.S.C. 81), requires Secretarial review of management contracts dealing with gaming, but does not provide standards for approval of such contracts;

(4) existing Federal law does not provide clear standards or regulations necessary to insure the orderly conduct of gaming activities on Indian lands;

(5) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government; and

(6) tribal operations and licensing of gaming activities is a legitimate means of generating revenues.

SEC. 3. The purpose of this Act is—

(1) to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments;

(2) to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to

ensure that the tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and the players; and

(3) to declare that the establishment of independent Federal regulatory authority for gaming on Indian lands, the establishment of Federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue.

SEC. 4. (a)(1) Except as provided in subsection (b), gaming regulated by this Act shall be unlawful on any lands acquired by the Secretary under existing authority in trust for the benefit of any Indian tribe after the date of enactment of this Act—

(A) if such lands are located outside the boundaries of such tribe's reservation or are not contiguous to such reservation; or

(B) with respect to tribes which do not have a current reservation, if such lands are—

(i) outside of such tribe's last recognized reservation within the State or States within which such tribe is presently located; or

(ii) are not contiguous to real property held in trust by the United States for such tribe before the passage of this Act.

(2) Nothing in this subsection shall affect or diminish the authority and responsibility of the Secretary to take lands into trust or apply to lands taken in trust as part of a settlement of a land claim or Federal acknowledgment process.

(b) Subsection (a) shall not apply if the Indian tribe requesting the acquisition of such lands in trust obtains the concurrence of the Governor of the State, and the governing bodies of the county or municipality in which such lands are located.

(c) Provisions of the Internal Revenue Code of 1986, concerning the taxation and the reporting and withholding of taxes pursuant to the operation of a gambling or wagering operation, shall apply to the operations in accord with the Indian Gaming Regulatory Act the same as they apply to State operations.

SEC. 5. (a) There is established within the Department of the Interior an independent commission to be known as the National Indian Gaming Commission.

(b)(1) The Commission shall be composed of five members who shall be appointed as follows:

(A) a Chairman who shall serve full-time and who shall be appointed by the President with the advice and consent of the Senate and who shall serve at the pleasure of the President;

(B) a member who shall be selected by the Secretary; and

(C) three members who shall be enrolled members of Federally recognized Indian tribes and who shall be appointed by the Secretary from the recommendations of tribes then engaged in or regulating gaming activities.

(2) Not more than three members of the Commission shall be of the same political party.

(3)(A) Except for the Chairman and except as otherwise provided in this paragraph, members shall be appointed for terms of three years.

(B) Of the members first appointed—

(i) the member appointed pursuant to paragraph (1)(B) and one member appointed pursuant to paragraph (1)(C) shall be appointed for a term of two years; and

(ii) the remaining members appointed pursuant to paragraph (1)(C) shall be appointed for a term of three years.

(4) Any individual who—

(A) has been convicted of a felony or gaming offense;

(B) has any management responsibility in any gaming activity regulated pursuant to this Act;

(C) has a financial interest in, or management responsibility for, any management contract approved pursuant to section 13 of this Act; or

(D) is employed by any Federal, State, or local government

shall not be eligible for appointment to, or to continue service on, the Commission.

(5) Except for the Chairman, a member of the Commission may only be removed for cause.

(c) Vacancies occurring on the Commission shall be filled in the same manner as the original appointment. A member may serve after the expiration of his term until his successor has been appointed, unless he has been removed for cause under subsection (b)(5) of this section.

(d) Three members of the Commission shall constitute a quorum.

(e) The Commission shall select, by majority vote, one of the members to serve as Vice-Chairman who shall serve as Chairman during meetings of the Commission in the absence of the Chairman.

(f) The Commission shall meet at the call of the Chairman or a majority of its members, but shall meet at least once every four months.

(g)(1) The Chairman of the Commission shall be paid at a rate equal to that of level IV of the Executive Schedule (5 U.S.C. 5315).

(2) The other members of the Commission shall be paid at a rate equal to the daily equivalent to that of level V of the Executive Schedule (5 U.S.C. 5316).

(3) All members shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

SEC. 6. (a) The Chairman of the Commission shall have power, subject to an appeal to the Commission, to—

(1) issue orders of temporary closure of gaming activities as provided in section 15(b);

(2) levy and collect civil fines as provided in section 15(a);

(3) approve tribal ordinances regulating Class II and Class III gaming as provided in section 11 and 12;

(4) approve management contracts for Class II and III gaming as provided in section 13; and

(5) promulgate regulatory schemes for Class III gaming as provided in section 12.

(b) The Chairman shall have such other powers as may be delegated by the Commission.

SEC. 7. (a) The Commission shall have specific power, not subject to delegation—

(1) upon the recommendation of the Chairman, to approve the annual budget of the Commission as provided in section 19;

(2) to adopt regulations for the assessment and collection of civil fines as provided in section 15(a);

(3) by an affirmative vote of not less than three members, to adopt the annual assessments as provided in section 19;

(4) by an affirmative vote of not less than three members, to authorize the Chairman to issue subpoenas as provided in section 17; and

(5) by an affirmative vote of not less than three members and after a full hearing, to make permanent a temporary order of the Chairman closing a gaming activity as provided in section 15(b).

(b) The Commission shall—

(1) monitor Indian gaming activities on a continuing basis;

(2) inspect and examine all premises where Indian gaming is conducted;

(3) conduct or cause to be conducted such background investigations as may be necessary;

(4) have the right to demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting income of a gaming activity and all other matters necessary to the enforcement of this Act;

(5) use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States;

(6) procure supplies, services, and property by contract in accordance with applicable Federal laws and regulations;

(7) to the extent feasible, enter into contracts with tribes, associations of Indian tribes and private entities for activities necessary to the discharge of the duties of the Commission;

(8) hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission deems appropriate;

(9) administer oaths or affirmations to witnesses appearing before the Commission; and

(10) promulgate such guidelines and regulations as it deems appropriate to implement the provisions of this Act.

SEC. 8. (a)(1) The Chairman, with the approval of the Commission, shall appoint a General Counsel to the Commission who shall have a background in Indian Affairs. The General Counsel may be paid at the annual rate of basic pay payable for GS-18 of the General Schedule (5 U.S.C. 5332).

(2) The Chairman shall appoint other staff of the Commission pursuant to the provisions of title 5, United States Code, governing appointments in the competitive service, but such appointments shall be subject to section 12 of the Act of June 18, 1934 (48 Stat. 986), as amended.

(3) The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

(b)(1) Upon the request of the Chairman, the head of any Federal agency is authorized to detail any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this Act, unless otherwise prohibited by law.

(2) The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this Act. Upon the request of the Chairman, the head of such department or agency shall furnish such information to the Commission, unless otherwise prohibited by law.

SEC. 9. (a) The Secretary or Administrator of the General Services Administration shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(b) The Secretary shall promptly provide staff and support assistance to provide interim regulation and orderly transition until such time as the Commission is appointed and can become organized.

SEC. 10. (a) Class I gaming shall be within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this Act.

(b) Class II and Class III gaming shall be within the jurisdiction of the Indian tribes, subject to the provisions of this Act, where such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity and such gaming is not otherwise specifically prohibited on Indian lands by Federal law.

SEC. 11. (a) An Indian tribe may engage in, and regulate, Class II gaming activity on the Indian lands of such tribe if the governing body of the tribe adopts an ordinance which is approved by the Chairman pursuant to this Act.

(b) The Chairman shall approve any tribal ordinance concerning the conduct, licensing, or regulation of Class II gaming activity on the Indian lands of such tribe if such ordinance provides that—

(1) except as provided in subsection (c), the Indian tribe itself shall have the sole proprietary interest and responsibility for the conduct of any gaming activity;

(2) net revenues from any tribal gaming activity are not to be used for purposes other than—

(A) to fund tribal government operations or programs;

(B) to provide for the general welfare of the Indian tribe and its members; and

(C) to promote tribal economic development;

(3) annual outside independent audits of the gaming activity will be obtained by the Indian tribe and made available to the Commission;

(4) all contracts for supplies, services, or concessions for a contract amount in excess of $25,000 annually, except contracts for professional legal or accounting services, relating to such gaming activity shall be subject to such independent audits;

(5) the construction and maintenance of the gaming facility, and the operation of that gaming activity, will meet applicable environmental, health and safety standards; and

(6) the tribe shall have an adequate system to ensure that background investigations are conducted on the primary management officials and key employees of

the gaming enterprise and that oversight of such officials and their management will be conducted on an ongoing basis.

(c) A tribal ordinance or resolution may provide for the licensing or regulation of Class II gaming activities owned by individuals or entities other than the Indian tribe, except that the tribal licensing requirements shall be at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State within which such tribe is located. No individual or entity, other than the tribe, shall be eligible to receive a tribal license to own a class II gaming activity within the tribe's jurisdiction if such individual or entity would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the State.

(d) Not later than sixty days after the submission of any tribal gaming ordinance, the Chairman shall approve such ordinance if it meets the requirements of this section. Any such ordinance not acted upon at the end of that sixty day period shall be deemed to have been approved by the Chairman, except as such ordinance may be inconsistent with the provisions of this Act.

(e)(1) Any Indian tribe which operates a Class II gaming activity and which—

(A) conducts such operation directly without a management contract;

(B) has continuously conducted such activity for a period of not less than four years, including at least one year after the date of the enactment of this Act; and

(C) has otherwise complied with the provisions of this section

may petition the Commission for a certificate of self-regulation.

(2) The Commission shall issue a certificate of self-regulation if it determines, from available information and after a hearing if requested by the tribe, that the tribe has—

(A) conducted its gaming activity in a manner which—

(i) has resulted in an effective and honest accounting of all revenues;

(ii) has resulted in a reputation for safe, fair, and honest operation of the activity; and

(iii) has been generally free of evidence of criminal or dishonest activity;

(B) adopted and is implementing adequate systems for—

(i) accounting for all revenues from the activity;

(ii) investigation, licensing, and monitoring of all employees of the gaming activity; and

(iii) investigation, enforcement, and prosecution of violations of its gaming ordinance and regulations; and

(C) conducted the operation on a fiscally and economically sound basis.

(3) During any year in which a tribe has a certificate for self-regulation—

(A) the tribe shall not be subject to the provisions of paragraphs (1), (2), (3), and (4) of section 7(b); subsections (i), (j), and (k) of section 13; and section 15;

(B) the tribe shall continue to submit an annual independent audit as required by section 11(b)(3) and shall submit to the Commission a complete resume' on all employees hired and licensed by the tribe subsequent to the issuance of a certificate of self-regulation; and

(C) the Commission may not assess a fee on such activity pursuant to section 14 in excess of one-half of 1 per centum of the gross revenue.

(4) The Commission may, for just cause and after an opportunity for a hearing, remove a certificate of self-regulation by an affirmative vote of not less than three of its members

SEC. 12. (a) An Indian tribe may engage in Class III gaming activity on the Indian lands of such tribe if the governing body of the tribe adopts a Class III ordinance which meets the requirements of section 11(b) and which is approved by the Chairman and such tribe has obtained a license from the Commission pursuant to subsection (b) of this section.

(b) With respect to any application for a license to operate a Class III gaming establishment, the Commission shall ascertain the ability of the prospective licensee, and any management contractor with which the prospective licensee has entered into a management contract, to comply with the provisions of this Act and the rules of the Commission, and otherwise determine the suitability and fitness of the management contractor, if any, to operate a licensed Class III gaming establishment in an honest manner, for the general economic benefit of the tribe. The Commission shall grant a license to any tribal applicant unless it makes a specific finding that such applicant cannot operate the gaming activity in accordance with the standards established under this Act and the gaming codes established by the Commission pursuant to this section.

(c) The Commission may suspend, modify, or revoke a license to operate a licensed Class III establishment if after a hearing, it concludes that, due to substantial violations of the requirements of this Act, the operator cannot continue to operate the gaming activity in accordance with the standards established under this Act. The Commission may also, with the consent of the tribe, impose additional conditions for the operation of such an establishment.

(d) Upon receipt of an application for a Class III gaming license, the Commission shall cause an appropriate review to be made and act on such application within one hundred and twenty days of the receipt of such application.

(e)(1) In any case where the Chairman first approves an ordinance under subsection (a) of this section for the conduct of a type of Class III gaming activity within any State, the Chairman, pursuant to paragraph (2) of this subsection, shall adopt a comprehensive regulatory scheme for such gaming activity. Such regulations shall be developed and adopted only after consultation with the affected Indian tribe or tribes and with the appropriate officials of the State within which such activity is to be conducted.

(2) The regulations adopted pursuant to this subsection shall be identical to those provided for the same activity by the State within which such Indian gaming activity is to be conducted which is applicable to a State licensee subsequent to the issuance of such license, except that the Chairman shall exclude any provisions of the State's regulations which impose any tax, assessment, fee, or other financial burden

upon a gaming activity and shall exclude or modify any of the State's regulations which he determines are clearly inappropriate for application to Indian tribes and their operations or which would unreasonably impair the ability of the tribe to conduct its operation.

(3) The regulatory scheme adopted pursuant to this subsection shall be uniformly applied by the Commission to any other Indian tribe engaging in the same type of Class III activity within the same State.

(f)(1) Where any State law or regulation adopted by the Commission pursuant to subsection (e) involves criminal penalties for violation thereof, such criminal penalties shall be enforceable by—

(A) the State where such State has the requisite criminal jurisdiction over Indian reservations pursuant to Public Law 83-280, or

(B) the United States pursuant to the Assimilative Crimes Act (18 U.S.C. 13),

as if such criminal penalties were part of the criminal/prohibitory laws of such State.

(2) No person shall be prosecuted under paragraph (1) of this subsection where the appropriate Indian tribe has adopted the regulation in question as a part of its own laws and has prosecuted such person for violation of such law.

(g) Prior to approving a license pursuant to this section, the Chairman shall evaluate the ability of the licensee to monitor and insure that gaming operations are conducted in a fair and safe manner.

SEC. 13. (a) Subject to the approval of the Chairman, an Indian tribe may enter into a management contract for the operation and management of a Class II or III gaming activity, except that, before approving such contract, the Chairman shall require and obtain the following information:

(1) the name, address, and other additional pertinent background information on each person or entity (including individuals comprising such entity) having a financial interest in, or management responsibility for, such contract, or, in the case of a corporation, those individuals who serve on the board of directors of such corporation and each of its stockholders who hold (directly or indirectly) 10 per centum or more of its issued and outstanding stock;

(2) a description of any previous experience which each person listed pursuant to paragraph (1) has had with other gaming contracts with Indian tribes or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency with which such person has had contact relating to gaming;

(3) a complete financial statement of each person listed pursuant to paragraph (1); and

(4) all collateral agreements made in connection with such contract.

(b) Any person listed pursuant to subsection (a)(1) shall be required to respond to such written or oral questions that the Chairman may propound in accordance with his responsibilities under this section.

(c) Any management contract entered into pursuant to this section shall specifically provide—

(1) that adequate accounting procedures are maintained and that verifiable financial reports are prepared by or provided to the tribal governing body and the tribal licensee on a monthly basis;

(2) that appropriate tribal officials shall have reasonable access to the daily operations of the gaming activity and shall have the right to verify the daily income made from any such tribal gaming activity;

(3) for a minimum guarantee payment to the Indian tribe that has preference over the retirement of development and construction costs;

(4) for an agreed ceiling for the repayment of development and construction costs;

(5) that the term of the contract shall not exceed seven years; and

(6) for grounds and mechanisms for terminating such contract, except that contract termination shall not require the approval of the Commission.

(d) The Chairman may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity if he determines that such percentage fee is reasonable in light of surrounding circumstances, but in no event shall such fee exceed forty percent of the net revenues.

(e) Not later than one hundred and twenty days after the submission of a contract, the Chairman shall approve or disapprove such contract on its merits. Any such contract not acted upon at the end of such time shall be deemed to have been approved by the Chairman.

(f) The Chairman shall not approve any contract where he determines that—

(1) any person listed pursuant to paragraph (a)(1) of this section—

(A) is an elected member of the governing body of the Indian tribe which has licensed the activity or is the party to the management contract;

(B) has been convicted of any felony or gaming offense;

(C) has knowingly and willfully provided materially important false statements or information to the Commission or the tribe pursuant to this Act or has refused to respond to questions propounded pursuant to subsection (b), or

(D) has been determined to be a person whose prior activities, criminal record if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto;

(2) the management contractor has, or has attempted to, unduly interfere or influence for its gain or advantage any decision or process of tribal government relating to the gaming activity, or

(3) a trustee exercising the skill and diligence that a trustee is commonly held to would not approve the contract.

(g) The Chairman, after notice and hearing, shall have the authority to require appropriate contract modifications or may void any contract if he subsequently determines that any of the provisions of this section have been violated or that the management contractor has deliberately or substantially failed to comply with the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved pursuant to this Act.

(h) The authority of the Secretary under section 81 of title 25, United States Code, relating to management contracts regulated pursuant to this Act, is delegated to the Commission.

(i) The Chairman shall license all employees of a gaming operation conducted pursuant to this Act who are employed in a management capacity. The Chairman shall determine what constitutes a management capacity for the purposes of this Act.

(j) The Chairman shall grant a license pursuant to subsection (i) unless it determines that such person—

(1) has been convicted of any relevant felony or gaming offense;

(2) has knowingly and willfully provided materially important false statements or information to the Commission or the tribe pursuant to this Act; or

(3) has been determined to be a person whose prior activities, criminal record if any, or reputation, habits and association pose a threat to the public interest or the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair or

illegal practices, methods or the carrying on of the business and financial arrangements incidental thereto.

(k) The Chairman, after notice and hearing, shall have the authority to suspend or revoke a license issued pursuant to subsection (i) of this section if he subsequently determines that such licensee no longer meets or is in compliance with the conditions established in subsection (j) of this section.

(l) The Commission shall require the potential management contractor to pay a fee which will be equal to the cost of the investigation necessary to reach a determination required in subsection (f)(1)(D) of this section.

SEC. 14. (a) As soon as practicable after the organization of the Commission, the Chairman shall notify each Indian tribe or management contractor who, prior to the enactment of this Act, adopted an ordinance authorizing Class II or III gaming or entered into a management contract, that such ordinance or contract and any collateral agreements must be submitted for his review within sixty days of such notification.

(b)(1) Within ninety days after the submission of an ordinance authorizing Class II gaming pursuant to subsection (a), the Chairman shall review such ordinance to determine if it conforms to the requirements of section 11 of this Act.

(2) If he determines that such ordinance conforms to section 11, he shall approve it.

(3) If he determines that such ordinance does not conform to the requirements of section 11, he shall provide written notification of necessary modifications to the Indian tribe, which shall have not more than one hundred and twenty days to come into compliance.

(c)(1) Within ninety days after the adoption by the Commission of a Class III regulatory scheme governing the type of gaming involved in a Class III ordinance submitted pursuant to subsection (a), the Chairman shall review such ordinance to determine if it conforms to such regulatory scheme and the appropriate requirements of section 12 of this Act.

(2) If he determines that such ordinance conforms to such regulatory scheme and to the requirements of section 12, he shall approve it and issue any necessary license.

(3) If he determines that such ordinance does not conform to such regulatory scheme and to the requirements of section 12, he shall provide written notification of necessary modification to the Indian tribe which shall have not more than one hundred and twenty days to come into compliance.

(d)(1) Within one hundred and eighty days after the submission of a management contract pursuant to subsection (a), the Chairman shall subject such contract to the requirements and process of section 13 of this Act.

(2) If he determines, at the end of such period, that such contract and the management contractor meet the requirements of section 13, he shall approve it.

(3) If he determines, at the end of such period, that such contract and the management contractor do not meet the requirements of section 13, he shall provide written notification to the parties to such contract of modifications necessary to come into compliance and the parties shall have not more than one hundred and twenty days to come into compliance.

(e) The provisions of this Act shall not be used by a tribe as independent grounds for terminating an otherwise valid existing contract if such contractor has agreed to modify the terms of the contract so as to bring such contract into compliance with the requirements of this Act.

SEC. 15. (a)(1) Subject to such regulation as may be adopted by the Commission, the Chairman shall have authority to levy and collect appropriate civil fines, not to exceed $25,000 per violation, against the tribal operator of an Indian game or a management contractor engaged in gaming for any violation of any provision of this Act or any regulation adopted by the Commission pursuant to this Act. Fines collected pursuant to this section shall be utilized by the Commission to defray its operating expenses. Tribal ordinances approved under section 11 and 14 of this Act shall be adopted as Commission regulations for purposes of this section.

(2) The Commission shall, by regulation, provide an opportunity for an appeal and hearing before the Commission on fines levied and collected by the Chairman.

(b)(1) The Chairman shall have power to order temporary closure of Indian gaming activities for substantial violation of the provisions of this Act or regulations adopted by the Commission pursuant to this Act.

(2) Not later than thirty days after the issuance by the Chairman of an order of temporary closure, the Indian tribe, tribal licensee or management contractor involved shall have a right to a hearing before the Commission to determine whether such order should be made permanent or dissolved. The Commission may, by an affirmative vote of not less than three of its members, order a permanent closure of the gaming operation after such hearing.

(c) Whenever the Commission has reason to believe that—

(1) the tribal operator of an Indian game or a management contractor engaged in activities regulated by this Act or regulations thereunder has violated any provision of this Act or regulations thereunder that may result in the imposition of a fine pursuant to subsection (a) of this section or the permanent closure of

such game under paragraph (2) of subsection (b) of this section or

(2) such activity may result in the modification or termination of any management contract under sections 13(f) or 14(c),

the Commission shall provide such operator or management contractor with a written complaint stating the acts or omissions which form the basis for such belief and the action or choice of action being considered by the Commission. The allegation shall be set forth in ordinary and concise language and must specify the statutory or regulatory provision alleged to have been violated, but may not consist merely of allegation stated in statutory or regulatory language.

(d) Nothing in this Act shall preclude an Indian tribe from exercising regulatory authority provided under tribal law over a gaming establishment within the Indian tribe's jurisdiction if such regulation is consistent with this Act or with any rules or regulations adopted by the Commission.

SEC. 16. Decisions made by the Commission pursuant to sections 11, 12, 13, 14, and 15 shall be final agency decisions for purposes of appeal to the appropriate Federal district court pursuant to chapter 7 of title 5, United States Code.

SEC. 17. (a) The Commission may authorize the Chairman to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter which the Commission is empowered to investigate by this Act. Witnesses so summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(b) Such attendance of witnesses and the production of such evidence may be required from any place within the United States at any designated place of hearing within the United States.

(c) If a person issued a subpoena under paragraph (a) refuses to obey such subpoena or is guilty of contumacy, any court of the United States within the judicial district within which the hearing is conducted or within the judicial district within which such person is found or resides or transacts business may, upon application of the Commission, order such person to appear before the Commission to produce evidence or to give testimony relating to the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) The subpoenas of the Commission shall be served in the manner provided for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

(e) All process of any court to which application may be made under this section may be served in the judicial district in which the person required to be served resides or may be found.

Sec. 18. (a) Except as provided in subsection (b), the Commission shall preserve any and all information received pursuant to this Act as confidential pursuant to the provisions of paragraphs (4) and (7) of section 552(b) of title 5, United States Code.

(b) The Commission may, when such information indicates a violation of Federal, State, or tribal criminal statutes or ordinances, provide such information to the appropriate law enforcement officials.

(c) The Attorney General of the United States is authorized to investigate activities associated with gaming authorized by this Act which may be a violation of Federal law, including but not limited to the Major Crimes Act (18 U.S.C. 1153), the Assimilative Crimes Act (18 U.S.C. 13), and 18 U.S.C. 1163. The Attorney General is authorized to enforce such laws, or assist in the enforcement of such laws, upon evidence of violation as a matter of Federal law, or upon the referral of information by the Commission pursuant to subsection (b) of this section.

Sec. 19. (a)(1) Not less than one half of the annual budget of the Commission shall be derived from—

(A) an assessment of not to exceed two percent of the gross revenues from each Indian Class II gaming activity; and

(B) an assessment from each Indian Class III gaming activity which shall be established by the Commission based upon the reasonable costs incurred by the Commission in its investigation, licensing, and regulation of each such gaming operation, but which shall not exceed the costs which are incurred by the appropriate State for its regulation of a similar gaming operation within its jurisdiction.

(2) The Commission, by an affirmative vote of not less than three of its members, shall annually adopt the rate of assessment authorized by this section which shall be payable on a quarterly basis.

(3) Failure to pay the assessment shall, subject to the regulations of the Commission, be grounds for revocation of any approval or license of the Commission required under this Act for the operation of tribal or individual gaming.

(4) To the extent that funds derived from such assessments are not expended or committed at the end of the budget year, such surplus funds shall be credited to each gaming activity on a pro rata basis against the assessment for the succeeding year.

(5) For purposes of this section, gross revenues shall constitute the total wagered monies less any amounts paid out as prizes or paid for prizes awarded.

(b)(1) The Commission, in coordination with the Secretary and in conjunction with the fiscal cycle of the United States, shall adopt an annual budget for the expenses and operation of the Commission.

(2) The budget of the Commission may include a request for appropriations, as authorized by section 20, in an amount not to exceed the amount of funds derived from assessments authorized by subsection (a) for the fiscal year preceding the fiscal year for which the appropriation request is made.

(3) The request for appropriations shall be subject to the approval of the Secretary and shall be included as a part of the budget request of the Department of the Interior.

SEC. 20. (a) Subject to the provisions of section 19, there is hereby authorized to be appropriated such sums as may be necessary for the operation of the Commission.

(b) Notwithstanding the provisions of section 19, there is hereby authorized to be appropriated not to exceed $2,000,000 to fund the operation of the Commission for the first fiscal year after the date of enactment of this Act.

SEC. 21. For the purposes of this Act—

(1) "Attorney General" means the Attorney General of the United States;

(2) "Commission" means the National Indian Gaming Commission established pursuant to section 5 of this Act;

(3) "Indian lands" means—

(i) all lands within the limits of any Indian reservation; and

(ii) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or which is held by any Indian tribe or individual subject to a restriction by the United States against alienation over which an Indian tribe exercises governmental power;

(4) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians which is recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians and is recognized by the United States as possessing powers of self-government;

(5) "gaming" means to deal, operate, carry-on, conduct, or maintain for play any banking or percentage game of chance played for money, property, credit, or any representative value, and shall consist of—

(A) "Class I gaming" which shall include social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of or in connection with tribal ceremonies or celebrations;

(B) "Class II gaming" which shall include card games and the games of chance commonly known as bingo or lotto and which is played for prizes, including monetary prizes, with cards bearing numbers or other designations, the holder covering such numbers or designations as objects, similarly numbered or designated, are drawn or electronically determined from a receptacle and the game being won by the person first covering a previously designated arrangement of numbers or designations on such card, including the use of electronic or electromechanical facsimiles, and shall also include pull-tabs, punch boards, tip jars, instant bingo, other games similar to bingo; and

(C) "Class III gaming" which shall include all other forms of gaming not defined in subparagraph (A) and (B) of this paragraph.

(6) "net revenues" means gross revenues of an Indian gaming activity less amounts paid out as, or

paid for, prizes and total operating expenses excluding management fees; and

(7) "Secretary" means the Secretary of the Interior.

SEC. 22. Consistent with the requirements of this Act, a tribe shall be considered as a state for the purposes of section 1307 of title 18 of the United States Code.

SEC. 23. Upon the request of the Miccosukee Tribe of Indians of Florida, the Secretary of the Interior is directed to accept from the Tribe, in trust as a part of the reservation of such tribe under sections 5 and 7 of the Act of June 18, 1934 (48 Stat. 985, 986), all of the Tribe's interest in approximately twenty-five contiguous acres of land, more or less, in Dade County, Florida, located within one mile of the intersection of State Road Numbered 27 (also known as Krome Avenue) and the Tamiami Trail. Such lands shall be accepted by the Secretary subject to existing encumbrances and rights. In addition to economic, residential, cultural and social uses and notwithstanding the provisions of section 4 of this Act, Class II gaming may be operated by the Tribe on the lands taken in trust pursuant to this section. A legal description of the land taken in trust shall be published by the Secretary in the Federal Register.

SEC. 24. In the event that any section or provision of this act is held invalid, it is the intent of Congress that the remaining sections or provisions of this Act shall continue in full force and effect.

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The CHAIRMAN. After we hear from members of the Indian Affairs Committee who wish to be heard this morning, our first witness will be our colleague and dear friend, Senator Pete Domenici.

Is Pete here?

[No response.]

The CHAIRMAN. Then we will hear first from our distinguished friend from Nevada, Senator Hecht. But before we do may I call upon my colleague from Montana?

STATEMENT OF HON. JOHN MELCHER, U.S. SENATOR FROM MONTANA

Senator MELCHER. Thank you, Mr. Chairman.

I believe it is essential that the Congress address the matter of gambling on Indian reservations. Congress has never acted on it, and so it has been left to the discretion of the tribes themselves.

I have thought about this matter during the last Congress, and it is my hope that what we can enact in this Congress is a law that permits the tribes on the reservations to do as they please up to the limits that have been imposed by the individual States. I say that with grave concern, both for the tribes and for the rest of the people who live in the State. If we set different standards, different opportunities as some might look at it, for the tribes on the reservation to become an island, different from what the rest of the State is, we will be doing a permanent disservice to both the tribes and the rest of the public in the various States.

States have chosen to what limits they want to allow gambling within their boundaries, and generally speaking that has worked well. To go beyond that seems to me to be courting trouble that will mount as time goes by.

The CHAIRMAN. Thank you very much.

I am now pleased to recognize the senior Senator from Nevada, the Honorable Chic Hecht.

STATEMENT OF HON. CHIC HECHT, U.S. SENATOR FROM NEVADA

Senator HECHT. Thank you, Mr. Chairman. Thank you, Senator Melcher. I appreciate both of your remarks.

Mr. Chairman, I've been asked to insert into the record the statement of Congresswoman Barbara Vucanovich from Nevada, also I'd like to submit my prepared remarks for the record and summarize them for the sake of time if there is no objection.

The CHAIRMAN. Without objection, so ordered. You prepared statement and that of Congresswoman Vucanovich will be made part of the record.

Senator HECHT. Mr. Chairman, thank you for the opportunity to share my views on the question of legal gaming on Indian lands. I am from Nevada, the gaming State, and the only Member of the Senate with a gaming license and a gaming background.

Legal gaming on Indian land should be subject to the same rules and regulations which non-Indian games must abide. Indian gaming should also be taxed in the same way.

Since last February when the Supreme Court ruled that absent congressional authority, the States generally may not regulate gaming on Indian lands, it has been apparent that a Federal policy toward such gaming was necessary. The question now before Congress is: Who will be responsible for ensuring that the gaming activities are legally and fairly run?

Included are some statistics on the impact on State revenues where Indian gaming will be permitted. Proposed Federal gaming legislation erroneously tagged an "Indian rights issue," would, if passed, open the door to crime and corruption on Indian lands.

More and more Indian tribes are turning to legal wagering—currently high-stakes bingo and cards—as a way of raising revenues. On the horizon are the more complex forms of wagering. The States that now have legal gaming were able to develop that regulatory expertise only after many long and sometimes discouraging years.

Nonetheless, two identical measures, S. 1303 and H.R. 2507, put substantially all regulatory control in the hands of the Indian tribes themselves. However, the States have an equally strong interest in controlling crime and corruption within their borders and in seeing that their citizens, and citizens from other States, are treated fairly in all commercial activities.

Rather than assuming that Indian sovereignty is the issue, the Congress must balance the legitimate rights of the Indians and the sovereign and law enforcement interests of the States. S. 1303 and H.R. 2507, in allowing self-regulation, fail to separate the regulated activity and the regulators.

The eagerness of the Indian tribes to engage in an obviously profitable activity is understandable. However, without an effective regulatory scheme in place, the tribes face the specter of corrupt gaming operations and corruption in the support industries connected with these activities. Such an outcome would have a profound impact on reservation life, on the States within which the reservations lie, and on the patrons of the gaming activities.

Those States that allow legal wagering already have time-tested regulatory policies, programs, and personnel. Bringing the more complex types of wagering on Indian lands under the protection of State regulation would allow the tribes to share in the hard-won respectable State-regulated gaming activities have achieved.

Those who seek to cross over the tribal territory to escape strict State scrutiny of their wagering activities and operations would have no place to hide: all legal wagering within a State would be treated exactly the same. Moreover, the use of State law enforcement agencies to regulate gaming, wherever located within the State, is a most efficient allocation of taxpayers' money.

It is clear that Congress must enact legislation on this important issue. S. 555 and H.R. 964, which place regulation of the complex forms of gaming with the States, are preferable alternatives.

Regulations of legal gaming on Indian lands is not an Indian rights issue. It is, quite simply, a law enforcement issue. And it is the States that are in the best position to regulate legal wagering within their borders.

Mr. Chairman, I thank you for this opportunity to appear before you.

[Prepared statements of Senator Hecht and Congresswoman Vucanovich appear in the appendix.]

The CHAIRMAN. Thank you very much, Senator.

Our next witness is the distinguished new Senator from the State of Nevada, Mr. Harry Reid.

STATEMENT OF HON. HARRY REID, U.S. SENATOR FROM NEVADA

Senator **Reid**. Thank you very much, Mr. Chairman.

I appreciate the opportunity to testify here before you today. I'd also like to take this opportunity to tell you how much I have appreciated the cooperation of your staff. It's been difficult to arrange the time of the hearing with your busy schedule, and the staff has been very gracious in helping me set up a panel of witnesses. I appreciate that very much.

Mr. Chairman, I consider this issue to be of the utmost importance, both to the future of my State's most important industry, also to the integrity of the United States and to the well-being, safety, and honor of those who occupy Indian lands.

I am here to argue for State regulation of gaming on all lands within a State, and against any exception to that rule. I approach the question with somewhat of a unique perspective since I served as chairman of the Nevada Gaming Commission in excess of 4 years. The commission in Nevada is the ultimate policymaker for Nevada gaming.

Based on that personal experience, I am convinced that regulation of gaming operations is, at best, an extremely complex, expensive, and an arduous task. Even in a small State like Nevada, it requires commitment of literally millions of dollars and many hundreds of employees, including: investigators, surveillance personnel, accountants, and attorneys, as well as a large and well-trained clerical staff.

Mr. Chairman, without those resources, effective regulation is not only difficult, it is impossible. Lack of effective regulation is an open invitation to organized crime to move into a lucrative area where the commodity is cash, and corruption reaps tremendous profits. Without adequate protection, not only the operator and the taxing and regulating authorities suffer; but also the consumer is denied a fair opportunity to win, and games of chance become games without a chance for winning.

In Nevada, for over 50 years, we have repeatedly experienced the heavy baggage borne by those who assume the duty to regulate gaming. We have seen mobsters move in and skim cash from casino counting rooms, an operation which allows them to launder money and reap illicit profits at the same time. We have seen attempts by organized crime to dominate gaming-related unions, and to obtain illegal control of casinos through improper loans as well as threats and intimidation. We have seen one time honest businessmen overwhelmed and corrupted by the ever-probing tentacles of organized crime. The battle has been continuous and all-consuming; it is never won and completely over.

I think in passing, Mr. Chairman, it's important to note that between them the State of Nevada and the State of New Jersey, spend about $100 million a year to regulate their gaming operations. That does not take into consideration the millions and millions of dollars added that require additional law enforcement and which includes a presence of addtional FBI and Internal Revenue

Service agents. It's quite important because the budget in this bill calls for $2 million, and I'm telling you that that budget's at least $150 million short.

I would also, at this time, Mr. Chairman, ask permission to introduced the testimony of Congressman Jim Bilbray of Nevada.

The CHAIRMAN. The prepared statement of Congressman Bilbray will be made part of the record.

Senator REID. Governor Bryan, who badly wanted to be here—but as you know a Governor of a State can't leave while a legislative is in session, and although they were supposed to have adjourned 2 weeks ago, as of late last night they were still in session—and I would ask that his testimony be allowed to be introduced.

The CHAIRMAN. The prepared statement of Governor Bryan will be made part of the record.

Senator REID. And also, Mr. Chairman, that of Michael Brown, former chairman of the Gaming Control Commission of New Jersey.

The CHAIRMAN. The prepared statement of Mr. Brown will be made part of the record.

Senator REID. I would also ask that the chairman also acknowledge the presence of Mike Rumboltz, who is the chairman of the Nevada Gaming Control Board, who is present at these hearings today but because of the panel situation we weren't able to have him testify.

Mr. Chairman, when I was chairman of the Nevada Gaming Commission my commission took action on what we believed were mob-influenced casinos. We imposed what were at the time the largest administrative fines in the history of the United States. We fought with legions of attorneys to shut down subverted casinos and clean up their operations.

I experienced some personal discomfort, to say the least, as a result of these battles. My life was repeatedly threatened and I was forced to obtain FBI and police protection on a continuing basis. What really bothered me, Mr. Chairman, were the threats and attempts even against my family. My wife discovered a crude bomb attached to our car; my children constantly walked in fear to school, many times under police observation.

I have not been alone in these experiences. Other public officials, some of whom are in this room, also feared for their lives. Bob Broadbent, who you'll recall was formerly the Undersecretary of the Interior, when he was a county commissioner in Clark County was a repeated target of threats, and as did I, he often carried a gun for protection. One of my commissioners, George Swarts, had a bomb placed in his car.

As recently as last year, Mr. Chairman, Ned Day, a Las Vegas columnist who repeatedly challenged through his columns and exposed the mob, awoke one morning to discover his car had been torched, burned. That's the bad news. The good news is that he wasn't in the car. The mob, you see Mr. Chairman, while they may appreciate constitutional protection when we catch them, they don't believe in freedom of the press.

My job was to protect the people of Nevada from the organized crime types who tried to muscle their way into Nevada gaming in many different ways. Today our job is to protect the public and potential owners of gaming establishments on Indian lands from these same dark forces.

I cannot and do not believe that small tribal groups of twenty, fifty, and even a few hundred individuals, often living in isolated communities, will be able to withstand the physical and financial onslaught of these sophisticated thugs and hoodlums who were a constant threat against the integrity of Nevada gaming.

I want to urge this committee to leave the power of regulation of gaming where it should be; in the hands of the States, which have the resources of money and personnel to adequately and effectively control any gambling they care to make.

Mr. Chairman, as you know, Congressman Tony Coehlo and I have been interested in this issue, and even though he comes from the State of California and I come from the State of Nevada and our interests are different, we still believe that the control should be literally in the hands of the States.

If States have not legalized some form of gaming, then the chances are they don't believe it should be permitted within their borders. The various legislatures are certainly most well-fitted to analyze their resources and the reaction to their populace on a statewide basis; no small group of whatever origin should be permitted to undercut that fundamental legislative decision.

Some will tell you that this is a question of Indian soverignty, and that the Federal Government should do nothing which might imply a role for other government entities. That argument, Mr. Chairman, and Mr. Melcher—that argument is, at best, disingenuous.

I'd like to point out that in the current United States Code there are 13 chapters containing over 2,000 provisions governing State and Federal relations as they relate to Indian tribes and councils. In the first 6 months of this Congress, dozens of pieces of legislation which affect Indian people have been introduced.

It also seems relevant that hundreds of millions of dollars a year are provided by the Federal Government to the same people who want nonregulated gaming, and those dollars are spent by the Federal Government on those same lands where the gaming should be permitted. It hardly seems reasonable to argue on the one hand that we have a responsibility to fund those programs, and yet on the other hand that we have no responsibility to protect their beneficiaries.

Indeed, in this instance, even if there were a persuasive argument that Indian people should be free from State gaming regulation in games played only be tribal members, I do not for a moment believe that is the case before you. I can guarantee you the gaming facilities proposed will be aimed at non-tribal patrons, and if you doubt my analysis, I invite you to propose to the gaming proponents that gaming participation by non-tribal members be prohibited as a condition of passing this legislation.

Mr. Chairman, the Federal Government has the legal authority and moral obligation to ensure that tribal enclaves do not become sanctuaries or organized crime. It is our duty to prevent a situation where State authorities stand by importently while their citizens are victimized, and the mob flaunts its operations before their helpless gaze.

I am neither exaggerating nor engaging in hyperbole. Unless control of gaming remains within the States, the hope for controlling organized crime in this country will be lost forever.

Thank you very much.

[Prepared statements of Senator Reid, Congressman Bilbray, Governor Bryan, and Mr. Brown appear in the appendix.]

The CHAIRMAN. Thank you very much, Senator. I appreciate your testimony. I think it will be extremely helpful to us. Thank you.

Senator REID. Can I be excused, Mr. Chairman.

The CHAIRMAN. Please.

We now have a panel made up of the Honorable Ross Swimmer, the Assistant Secretary for Indian Affairs, Department of the Interior; and the Honorable Victoria Toensing, Assistant Attorney General, Criminal Divison, U.S. Department of Justice.

STATEMENT OF HON. ROSS SWIMMER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. SWIMMER. Mr. Chairman, I thank you for this opportunity of appearing before the committee. I have a prepared statement that I would like to have submitted for the record, and if allowed simply summarize some of my views toward this particular issue.

The CHAIRMAN. Your prepared statement will be made part of the record.

Mr. SWIMMER. Gambling has become a major issue throughout Indian country. It started with the introduction of high-stakes bingo in the Florida area, and after it had been tested there for a few years, it appeared that it was something that could be played in other areas of Indian country, and it expanded rapidly over the last 4 years.

Prior to my joining the Department of the Interior, the Secretary made a decision that in his opinion the policy of this Government should be to support bingo activities on Indian lands. I think in the context of the *Cabazon* case, which the Supreme Court recently decided, that decision was made partly on the basis that bingo had been more or less an acceptable activity both of various religious groups and nonprofit organizations throughout the country.

At that time it was very difficult to know how fast and how far these operations of high-stakes bingo would spread across this country.

I think we all felt that there was reasonable control—or could be control——

The CHAIRMAN. Mr. Secretary, could we interrupt and permit Senator Domenici to testify at this stage?

Mr. SWIMMER. Sure.

The CHAIRMAN. He has to go to a budget meeting, so if you could just temporarily set aside your testimony.

Senator Domenici.

STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

Senator DOMENICI. Thank you very much, Mr. Chairman.

I have some prepared remarks. I would ask that they be made a part of the record.

The CHAIRMAN. Your prepared statement will be make part of the record.

Senator DOMENICI. Mr. Chairman, members of the committee, I won't take a lot of your time this morning, but I would like to share a few thoughts and observations about the subject of—and I will break it into two parts—bingo on Indian reservations, and then what I would call hard gambling, in which I include horse and dog racing, and other parimutuel gambling and casino-type gambling. Now, I understand in the bingo issue there is also that smaller issue in California of card games, but I will just include that in bingo in my attempt to break my thoughts down into two parts.

Obviously, Mr. Chairman and members of the committee, with reference to bingo and the Supreme Court decision, it's clear to this Senator that we ought to proceed as a Congress to affirmatively act with reference to bingo.

While this Senator might not think it's the most exciting form of economic development for the Indian people, and while I might have personally some concerns about what has transpired with reference to bingo, the case is pretty clear that it is going on. It is having some degree of success, mixed with reference to inuring monetary benefit to the Indian people, I think it's obvious that we have to set some regulatory scheme in place. I don't think anyone would conclude that a gaming activity of the dimension that it is approaching nationally should go on as it is.

So I don't have any difficulty, and I urge that you as expeditiously as possible create a minimal national commission for the purpose of regulating bingo on Indian reservations and Indian lands, controlled and operated by the Indian people.

I think we ought to go ahead and establish for the protection of the Indian people and those who participate in bingo a commission that would set standards, would have authority to make sure that it's done in the most propitious manner, obviously with the goal in mind of maximizing the return to the Indian people, first, and second making sure that it's run in a way that is honest and integrity laden because, obviously, that has a great impact on many non-Indian people and I think it's imperative for its success that it have the greatest opportunity to succeed and be fairly operated, and that our Indian people have the maximum opportunity to benefit. I think that's an easy one.

The second issue seems to have gained some degree in complexity in terms of interpretation; I don't quite understand why. As a lawyer I read the latest "Opinion" and I've asked some other lawyers to read the U.S. Supreme Court decision. To me is very clear: The Supreme Court is saying that they chose not to viciate the Indian gambling that was before them in that case because Congress had not clearly spoken with reference to the issue. That's my simple interpretation.

There are some who would chose to say that the Supreme Court's interpretation is saying that there can be no limitation on Indian gambling, that is the hard gambling, and that they cannot even be regulated by State law with reference to that kind of gambling. This divergence of view—are the Indian people now permitted to have gambling in a State even if that State prohibits it, and can we do anything about it nationally, or should we?

I think, for the most part, that theory is not found in any of the major bills that are before you. If you read the distinguished chairman's bill, it does not take that position. It says, indeed, if there's going to be gambling of that type it will follow State law. If you read the Udall-McCain bill and read its basic thrust, it seems to be saying the same thing: gambling will be permitted in the States, run by the Indian people on Indian land, if permitted and regulated by State law, managed at the Federal level.

I, therefore, assume in coming before you that there are no tricky words in either of the bills that are intended to go beyond that basic interpretation requiring the application of State law. Now, as I read verbosity sometimes I questioned a few of the words as to what they mean, but if the thesis is as I've described it, then we really have a very narrow issue because it seems, to repeat myself, that your bill, Mr. Chairman, and the so-called Udall-McCain bill both are saying, as far as class III gambling, beyond bingo, Indian gambling will be permitted and regulated consistent with State law.

The only difference that the two bills have created, as I read it, is who would do the regulating and how would you assure honesty, integrity, protection of the non-Indian gamblers and make sure that our Indian people had protection as they set it up from those who might be shysters and from the natural corruption that follows hard gambling.

In your case, the bill that you introduced, you suggest that there is a national interest by way of the Secretary that things should come to the Secretary, but then as I read it they would be referred back to the gaming commissions of the respective State to be implemented. That is, the permits and requests, are to be implemented pursuant to State law with the protections that you've written in: you can't tax them any differently, you can't charge them any differently than you charge others, you can't tax their profits because of another rule, and then you mandate that they not be discriminated against.

The other approach seems to be a rather expansive notion to no end. The other approach of the Udall-McCain bill recognizes the same premise as the chairman, but then it says even though you're going to be applying State law, State regulations, and the like, nonetheless set up a national commission and let them be the interpreters and implementers of the 50 States' rules, regulations, laws, inhibitions, and prohibitions in the issuance and the regulation of gambling.

From my standpoint, since it appears to me that the major bills before draw the issue that narrowly, and if nobody has any ulterior motives in the use of words to expand upon the regulatory processes of the State or to permit gambling where it is not permitted, then it seems to me the issue is very simple and very forthright, and for me it's very easy to make my recommendation and my choice. I see no reason, with reference to hard gambling, class III, if the facts and the assumptions are as I have stated them, to set up a whole new national paraphernalia to rule, regulate, and implement the rights and privileges of our Indian people with reference to gaming on their reservations.

Now, Mr. Chairman and members of the Commission, I regret to say that what I have told you is what I see in the major bills and what I have heard from a number of lawyers about the status of our authority and what the Supreme Court case means, that some of our Indian people assume that case means that there is no way that the U.S. Congress can say there will be no greater privilege on Indian land for gambling than that which is permitted by State law. Now, if that is the interpretation, then obviously everything I have said is irrelevant. And then you have the true creation of a national commission to establish the will of each State's citizens with reference to gambling, and it would supersede and prevail in all respects and decide where you can and where you can't regardless of State law.

So, Mr. Chairman, it seems to me we ought to get on with the validating of bingo and make sure that we give our Indian people all the help and direction that we can, and that we protect the citizens who are participating to the maximum extent with the Commission.

With reference to hard gambling beyond that, it seems to me that your bill is much more prudent than the approach of setting up a whole new national commission to implement the rules and regulations of State law.

I'd be pleased to answer any questions, and I thank you for accommodating me.

[Prepared statement of Senator Domenici appears in the appendix.]

The Chairman. Well, I thank you very much. I would like the record to once again show, as I indicated in my opening statement, that I am personally against gaming, and I have opposed it in my State of Hawaii, but I did not wish to impose my standards upon the desires of the Indian people; therefore, I introduced this measure at the request of several Indian tribes. But I will be asking hard questions, and I am, like you, concerned about the intrusion of unscrupulous persons, persons who may not act in the best interests of our Nation or, for that matter, the best interests of the Indian people.

So if my vote is going to be affirmative, I will have to be satisfied that these criteria are met.

I appreciate your testimony, and I can assure you that I will be following this very carefully.

Senator Domenici. Well, we who now find you, as chairman of this committee, Mr. Chairman, and those of us who have a number of Indian tribes, and in my case I have a higher percentage of Indians, I believe, in my State than any State in the Union, and it's not just one or two groups. We have many, many independent individual groups with different cultures, different ideas, and different economic situations. Bingo has been good for some. It has not been quite successful for others. In some instances some are run very well, in other instances there are a lot of complaints that they're not being run well. But I believe the Nation has to do something in that regard both for Indian people and the participants.

But, Mr. Chairman, I submit that the next issue is the difficult one: what are we going to do nationally about gambling beyond bingo? As I indicated, I don't think there's any question in the world that it's up to Congress to legislate, and secondly I think the issue is whether we are going to set up a new national commission to interpret and regulate for each State with the idea that we're going to enforce their rules, their laws, and their regulations. That seems to be the thesis in both bills, that we're going to do that.

I submit that if we're going to, that your approach of not having a national commission to do that, but rather interjecting the Secretary as some kind of a first step and then reference back to the State commissions for them to enforce their State law, making sure that the Indian people are granted every privilege, every right that everyone else is, but no more than anyone else. I think that's the appropriate one.

The CHAIRMAN. Thank you very much.

Mr. Secretary.

Mr. SWIMMER [continuing]. As the Indian bingo issue has proliferated across the country, we did come to the conclusion that it was not simply an act of charity, and it was not simply a way of promoting Indian rights or just an alternative to existing lifestyle on the reservation, that, in fact, it was a big business that was going on and for the most part is controlled not by Indians, but by outsiders who have brought that business to the reservation.

We've become very concerned as a result of that and believe, definitely, that Federal legislation is needed.

We were in support of a bill very similar to S. 555 in the last session. Many people were waiting for the *Cabazon* case to be decided. Some believing that once it was decided the issue would be ended because State law would simply prevail; others saying that if it went the other way that the need for Federal regulation would be absolute.

Because of *Cabazon* we don't believe that there has been any change in the need for a bill similar to S. 555. We certainly don't believe that S. 1303, which effectively puts hard-core gaming under self-regulation by Indian tribes is the way to go. We definitely believe that bingo alone, being played as it is now—which I can identify at least four or five games in excess of $15 million a year—is borderline hardcore gaming. There's no other way to call it. It's a lot of cash money coming in, and, as we have seen, tribes in the past have had difficulty even operating Federal programs much less being able to account for those types of funds coming onto the reservation.

So we are very concerned that some kind of regulation be mandated as it applies to bingo, and we think that S. 555 is the best approach. We also believe that there need to be some strengthening of that bill.

We are not, again, talking about an Indian sovereignty issue, an Indian rights issue, we're simply talking about gambling.

To set up a Federal commission is going to be difficult, at best. But we have seen some benefits from the bingo operations, it is bringing in some income. But it is wholly unregulated.

We, in the Department of the Interior, do not have any resources to speak of, certainly not adequate under title 25 or others, that would allow us the opportunity to regulate to the degree that is needed. We firmly believe that some strong regulation must be advanced, and that S. 555 is necessary.

One other thing that came to my mind as I was reviewing this legislation and the general state of affairs out there relating to my own State, is that most States—or I'd say many States that I'm aware of—have had constitutional prohibitions on gaming similar to alcohol laws. Most of those States, then, and particulary Oklahoma as I recall, required a referendum before the State changed its Constitution and permitted statewide gaming of any kind.

In our case they permit parimutuel betting, but not only did they make it a statewide vote issue, they en made a country option so that it wouldn't be automatic, and that every country that adopted parimutuel issue vote on it by a vote of the people.

The reason I bring that analogy up is that one thing I've heard as I go around Indian reservations is from the people on those reservations. They say, "You know, we really don't like this idea of gambling, but I guess we don't have anything we can do about it. The tribal leadership decided to bring gambling onto the reservation." Now, I'm not so sure that it couldn't be something that at least suggested perhaps, maybe not made mandatory, but at least looked at to give the people on the reservation an option to vote on whether or not that reservation should have gambling as a business on that reservation.

I understand some arguments would be brought up and say, "Well, they can elect their tribal council. If they don't like gambling they can vote them out." But gambling is a single-purpose issue. You don't go vote out people because they voted for gambling. Maybe if the council voted for a lot of other things you didn't like you might vote them out. But I think that gambling, bringing this kind of an activity to a reservation, not unlike alcohol, is something that has moral connotations to it, it also—as we have heard and observed ourselves from inspector general reports, from skimming operations that are already going on, from illegal activities that we see on a regular basis out there in some of the operations—we know that it's bringing a burden to the reservation as well as an economic benefit, and the people should have an opportunity to visit about that.

I chose, when I was principal chief of the Cherokee Nation, not to accept bingo. I vetoed it when the tribal council passed it. I did it primarily because of the burden that I believed it would bring to the tribal government in trying to regulate it and trying to manage it and deal with it. I found that dealing with private-sector economy, talking about manufacturing businesses, trying to create jobs that in my opinion have a much longer term benefit on the reservation, were the places we needed to put our emphasis and our effort, and not on gaming.

On the other hand, I have seen in tribes from Florida to the State of Washington that have high-stakes bingo operations—and some of those in Oklahoma—that have been providing economic benefit to the reservations.

So I think it should be an option to have bingo on the reservation. It should be highly regulated. I do not believe that there is room for a Federal Regulatory Commission to get into hardcore gaming and the class III gaming. It would be economically unfeasible. You conceivably could have to have regulators who knew all there was to know about a horse track. It's conceivable you get one horse track in Oklahoma, you could have one jai alai in Florida, you get one other dog track some—yet you have to have the talents of all these people brought to bear to regulate perhaps one game out there in Indian country. It doesn't make sense economically. It doesn't make sense when its already in peace at the State level. If the States are permitting hardcore gaming, they have already gone through, as we heard before, the throes of setting up a commission.

So for those reasons I would support S. 555 as an effort by the committee to provide the regulation necessary to permit Indian bingo on the reservation. I would suggest going to a popular vote of some kind, or at least recommending it, and I think that we can do some things to strengthen S. 555. We'd be pleased to continue to work with the committee and try and develop the other things we think would be necessary.

I thank you for this opportunity, and turn the table over to my colleague here.

[Prepared statement of Mr. Swimmer appears in the appendix.]

The Chairman. We will hear from the Assistant Attorney General before we ask questions.

Welcome back.

STATEMENT OF HON. VICTORIA TOENSING, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

Ms. Toensing. Thank you, Mr. Chairman. Thank you for asking me to present the Justice Department views on Indian gambling.

I have a much more complete statement for the record. I'm sure you won't mind if I refer to a shorter version of some of my ideas.

The Chairman. Your prepared statement will be made part of the record.

Ms. Toensing. Thank you.

Mr. Chairman, we at the Department, and I personally, are aware of your very deep commitment and concern for the Indians and the economic condition, and I also know that you have a great concern for our law enforcement interests, and I hope that we can work together and balance those two competing interests. In some areas they won't be competing, but in other situations they will be. I'm sure that we can work something out with our two staffs working together.

I might also point out that this Department of Justice is also very committed to the interests of federalism, letting the States have authority in those areas which are left to the States, so we will also address those kinds of considerations. But I have no doubt that we can work something out here.

Let me just very briefly state the status of gambling on Indian reservations because I think that many people are surprised when I tell them that presently there are no rules or regulations for gambling occurring on Indian reservations except those rules that those tribes who are gambling choose to set out for themselves.

There is no pot limit, no method for learning how much money goes in or comes out, how much is truly profit. We, in the Department, tried to get that information in the last year or two years and could not even acquire that kind of information. There are no rules for how the games are played, and there's no provision for acquiring that information.

In sum, there is the potential for customers to be cheated in corrupt games, for money laundering—which is a great concern of the Department now in the narcotics area, particularly since we've been cracking down on the banks—and I think most importantly, Mr. Chairman, there is the great potential for the Indians themselves being defrauded by unscrupulous contract managers.

So the Department's duty is to push for provisions that will curb the loose gambling on the reservations and that will provide us with the ability to look into these situations and assure the public and the tribes that these games are being carried on properly.

As we view S. 1303 we do not find a structure there that we feel is a drafing vehicle. We look more to your bill, Mr. Chairman, S. 555, which would be more appropriate for us having some of our basic needs in it, as the vehicle for looking at what we can compromise on.

Let me just point out some of the features of your bill that we support. We particularly appreciate the handling of class III gambling. There are certain kinds of gambling that are quite attractive to the criminal element, probably because of the complicated way by which the winnings are decided, or the easy way by which cheating can occur. For instance, the parimutuel is very ripe for people pulling the wool over who gets money and what kind of money is received. There's also the crap games and the roulette wheels, those kinds of gambling that are very ripe for people having crooked games.

So it's very important that the States that are permitting this kind of gambling and know how to regulate it, determine how they should be run and what kind of regulations and licensing should occur. So we appreciate that concern. It also takes into account our federalism needs.

We have one area in casino gambling that we want to make sure that we're in agreement on what we perceive to be your intent. That is that the casinos are not run in contravention of the State laws that really do not intend for there to be casino gambling.

Very few States really allow casino gambling, but there are many more States that for 1 or 2 nights a year and for certain charitable purposes, allow the local churches to have Las Vegas evening, and therefore allow for a brief period and for limited amounts, the crap games and the roulette wheels and the card playings that are in the casino gambling. We would hope—we expect that your intent is that because there is this limited permission for certain evenings with very strict rules and only for charitable purposes, that would not mean that the whole area of casino gambling is then allowed on Indian reservations under that civil regulatory analysis. So we ask that we could look at that again and make sure that really is strengthened and made clear in the bill.

The CHAIRMAN. I can assure you that is my intent as author of the measure.

Ms. TOENSING. I assumed that it was, but our lawyers looked at it and thought that it might be unclear in the legislation, so we would like to work with you on that.

We do not oppose your approach to the parimutuel wagering, which would transfer to the State the licensing and regulations in that area. The State would be reimbursed for costs, but could not charge such that it would be a taxation on the Indians, and we understand that. If the Indians thought that they were being discriminated against, they would have a cause of action. We do not see that provision, the cause of action, as changing any present law, and so we do not object to that area.

I would like to turn to the commissions, though, that regulate the bingo or the class II gambling. There, it is very important for us to have a strong commission that really can look at what is going on and make sure that there are no defraudings going on in the bingo area.

We would like to work with you. I would not like to get into any specific comment now, but I would like for my staff to work with your committee staff and see where we could agree that we could have some kind of stronger regulatory provision there for the commissions.

If you have any questions, Mr. Chairman, I'd be glad to answer them.

[Prepared statement of Ms. Toensing appears in the appendix.]

The CHAIRMAN. Thank you very much.

First of all, Mr. Secretary, I'd like to tell you that your idea on the referendum makes good sense. This measure, like most measures relating to Indian people, has a section on definitions. What is an Indian tribe? It's a tribe, nation, organized community or other entities. Is there any standard as to the number required to be recognized as a tribe?

Mr. SWIMMER. No, sir.

The CHAIRMAN. What is the largest tribe in the United States under your jurisdiction?

Mr. SWIMMER. We have approximately 310 organizations now, possibly one or two new ones, that are recognized as tribes. The smallest tribe, until recently, was one individual on the Augustine Rancheria in California. She died. The Augustine Rancheria has no Indians on it, but is still a reservation.

We have other rancherias in California that, under what was known as the *Atili-Hardwick* decision, have been recognized. This was under an act of Congress years ago that was to provide landless and homeless Indians with a home site, and it's mostly families that are made up of these small groups. We have some of 3, 4, 5, 10, 15, 20, there are 100 rancherias and a couple of tribes in California. But these groups are, as the definition says, organizations, groups, colonies, rancherias, they can be very small or they can be very large, up to the Navajo Nation.

The CHAIRMAN. Would that rancheria with three, four, or five, as you mentioned, come under the terms "Indian tribe" in this bill?

Mr. SWIMMER. Yes; we have some of those rancherias that have multimillion dollar bingo games going on now.

The CHAIRMAN. What rancheria?

Mr. SWIMMER. I can supply a list of them. Cabazon was a very small one, not quite that small, that was the basis of the lawsuit. There are others scattered, I would say perhaps a half-dozen if not more, that I was made aware of when I visited California recently. One we have a problem with now: as I understand the chairman, who was ousted by a vote of 8 to 10 or something, left the reservation and took $1 million out of the bank account, and it was bingo income. That is part of, of course, my concern about that definition in allowing groups like that, because there's not a capacity of self-regulation in those instances—it's three or families getting together and playing high stakes bingo.

The CHAIRMAN. Will you submit to this committee available statistics on Indian organizations that have gambling on their premises or reservations?

Mr. SWIMMER. We will to the extent that we have that knowledge. We don't know all, but I think I can get a pretty good reading of most of them.

The CHAIRMAN. Will you also include in the statistics the number of members who are recognized by the Department?

Mr. SWIMMER. Yes.

[Information attached to Mr. Swimmer's prepared statement in the appendix.]

[Other material retained in committee's files.]

The CHAIRMAN. You've just indicated that you do not have available all that information. Is this not within your jurisdiction?

Mr. SWIMMER. No, sir; it's not. It is not considered trust income. We do not have any way of mandating it. Under 25 U.S.C. 81, we have limited authority to seek knowledge about contractors—third-party contracts coming into the reservation. We have required and we're preparing some regulation, simply due to a lack of any other law or regulation, built around section 81. But in the past when we have sent out demand notices for information under section 81 we've been ignored. We don't have any enforcement power. It is possible to bring suit, and I've recently advised the Justice Department that as we run into these situations where we cannot get information on contractors or even get a copy of the contract that we'll refer it to Justice and seek some kind of order or prosecution to try to stop it. But it's basically civil in nature and we haven't been successfully getting all those contracts in yet.

The CHAIRMAN. But in your trust relation where you should be concerned with the welfare and the best interest of the Indian people, are you advising me that you have no authority whatsoever to look into gaming activities?

Mr. SWIMMER. That's correct. We do not——

The CHAIRMAN. What authority——

Mr. SWIMMER [continuing]. Interfere with the internal operations of the tribe as far as gaming is concerned. We cannot go in and mandate that the tribes turn over their accounting records to us, or go in and inspect the games under any kind of authority.

The CHAIRMAN. Do you have any authority to look into the conditions of their health, housing, employment?

Mr. SWIMMER. We do under the various programs that the Congress has provided through our agency and other agencies. We do fund those various types of social service programs, and as we provide those moneys we go onto the reservation, look at the statistics, review the conditions, and attempt to supply money to help alleviate some of those needs.

The CHAIRMAN. Ms. Toensing, I think most of us on this committee have received letters and other communication suggesting the intrusion of syndicates and mafia and criminal elements into this type of activity—do you have any evidence, or are you pursuing any investigation, that would suggest that these elements are involved or are intruding into the activities of Indian gaming?

Ms. TOENSING. Mr. Chairman, I really can't—I'm sorry I've got a sore throat and I'm having a hard time. Bear with me for a second.

I cannot comment on investigations that are ongoing, but I——

The CHAIRMAN. May we just know whether you are investigating?

Ms. TOENSING. Yes; I can tell you that.

The CHAIRMAN. Can you tell us the number of tribes or reservations you are investigating?

Ms. TOENSING. I don't know if we could go into that specific information. Perhaps in camera, or in an executive committee we could——

The CHAIRMAN. Without naming the reservations.

Ms. TOENSING. I would want to check, though, before I gave you that much more specific information.

The CHAIRMAN. All right. Does your investigation to date suggest that unwelcome elements are intruding upon Indian gaming activities?

Ms. TOENSING. There is that indication, Mr. Chairman.

The CHAIRMAN. Are there——

Ms. TOENSING. It's not, of course, in every single area, but as they begin to see the validity or the fact that Indian gambling is going to be there after the Supreme Court decision, that is when organized crime begins to get into areas. They're not going to do it when it's still an unstable arena. They will wait until they see specifically that's going to be the way the reservations are going to be run, that's the status quo, and then they will make their decision to move in. I give you that information on the basis of my conversation with people in the FBI who are versed in the way organized crime operates.

The CHAIRMAN. Can you provide this committee with whatever classified information you may have on your investigation to the extent you feel that it's proper, with the assurance from this committee that it will be held in secret, as you request? It would be extremely helpful.

Mr. Secretary, don't you have the authority at this time to look into the tribal funds?

Mr. SWIMMER. Not unless they're Federal. We do not have knowledge of income unless it is Federal or coming in from trust properties. We do, of course, collect oil and gas receipts, land rentals where it's coming in from trust lands, but that's the extent of it. We would not be able to go in under our authorities and review tribe's books on income not related.

The **Chairman**. So this income from gaming activities, you have no jurisdiction or authority over?

Mr. **Swimmer**. No; we do not know how that income is being spent. We have no records of it at all. We have been given some information from some tribes that say we just funded a health clinic, or we just provided some scholarships, or we have put some money into this or that. We do not have anything to verify it. We don't have any way of going in and doing the audits.

Under the Section 81 proposed regulations, which we hope to be able to put out very soon as we anticipate this legislation, we have provided in there a requirement for auditing that audits would be submitted to the Bureau where there is a contractor involved. Again, if it's strictly tribally operated we can't get into that.

The **Chairman**. Senator Burdick.

Senator **Burdick**. Mr. Chairman, and Mr. Swimmer—I missed the first part of your testimony. I recap a bit. As I understand it, your testimony is that there's no impediment to Indians performing bingo right now? There's no restrictions?

Mr. **Swimmer**. As long as there is any legitimacy within the State, under the Cabazon there is no ability for regulation. Now, if the State absolutely outlaws bingo then it could not be played in Indian Country either.

Senator **Burdick**. Yes; but I understand that it is a jurisdictional question whether the State has any authority over Indian tribes.

Mr. **Swimmer**. That's correct. That was a statement of the *Cabazon* case, that the State, where it permitted bingo, could not regulate that bingo on an Indian reservation.

Senator **Burdick**. Therefore, as it stands right now bingo games are legal within the reservations?

Mr. **Swimmer**. They are legal and they are unregulated.

Senator **Burdick**. And your recommendation is what?

Mr. **Swimmer**. My recommendation would be to support the concept of bingo as its played in Indian country with a strong regulatory foundation provided for the Federal law, and that these games, since there's really no ability of the States to regulate high-stakes bingo either, that this is an area that is going to have to receive some Federal attention and the tribes would prefer not to be under any State regulation, so the Federal Government, I think, is going to have to step in if we are going to accept the premise of having Indian bingo.

Senator **Burdick**. Of course, the Federal Government could invest the States with power if they wanted to.

Mr. **Swimmer**. They could, but I suggest the price tag would be about the same to the Federal Government because the States wouldn't want to accept it, and where States permit charitable bingo generally they do not have a strong regulatory commission.

Senator **Burdick**. Under 555 does the State have any regulatory authority?

Mr. **Swimmer**. No; except on class III gaming.

Senator **Burdick**. Thank you Mr. Swimmer.

The Chairman. Mr. Secretary, if I may ask one more question: can you tell me if you have jurisdiction over theft of funds from Indian treasuries?

Mr. Swimmer. We do have that criminal jurisdiction. If we were advised of a criminal activity—and in a few cases I was alluding to earlier we have requested the Inspector General to go out and investigate what's been an alleged theft of bingo income, just like we would of Federal program income, we do have the criminal responsibility to go onto the reservation and investigate where we've been told that there's criminal activity going on.

I'm suggesting there is no civil authority, though, to require a tribe to provide us audited records of their non-trust income. But if——

The Chairman. So in the case of this former chairman who allegedly absconded and ran away with $1 million you do have jurisdiction over that?

Mr. Swimmer. We are investigating that issue. We also have one under indictment for skimming a tribal bingo operation. Where we are requested to or get information from the public that there is a crime being permitted we have Federal criminal authority to go onto the reservation and investigate it, and we have the I.G. inspecting several of those now.

The Chairman. What Indian games have involved skimming?

Mr. Swimmer. Well, they haven't all been discovered, I suspect, so we don't know. I would say those that we're aware of——

The Chairman. How many convictions have you had?

Mr. Swimmer. I would have to check to see if we've had convictions or if they're just under indictment. It's a fairly—I think most of them have occurred in the last 6 months and they're still going through the process.

These are not related to any justice issues. These are strictly where we have been alerted that there is some crime involved and we have asked the Inspector General to review the situation and where he believes that there is a crime then he can seek an indictment. I can provide you with that information.

The Chairman. If we may, the committee would want to at some later time submit to you questions.

Mr. Swimmer. Sure.

The Chairman. If you can respond to them we'd appreciate it. I thank you very much.

Senator Burdick. Mr. Chairman, I have one more question.

The Chairman. Oh. Please.

Senator Burdick. I would like to address this to the Attorney General.

Ms. Toensing. Thank you for the promotion.

Senator Burdick. If the expanded gambling activities take place on Indian lands, as the vision under S. 1303, the tribal resources are not sufficient to adequately regulate these operations. What additional resources, in terms of funds and manpower, would the Federal Bureau of Investigation, as the only agency with jurisdiction on Indian lands, need to provide what do you consider to be adequate regulation to protect the public interest?

Ms. Toensing. We would be glad to look into how much more funding would be required if we had to do that. We will get back to you on that. I don't have that information available, but I'm glad that you brought up the subject of funding because it's a point that I did not get to add, Mr. Chairman. I was out of the country for the last 10 days and just returned yesterday. But if I would have had the time to add this to my statement on the record I would make the point that I am very concerned about the fact that taxpayers are paying for this regulatory scheme, at least for 50 percent of it, as I understand S. 555.

So I would recommend that if there's to be Indian gambling, and that the Indians are to reap the profits from it, then they should also pay for its regulation.

Senator BURDICK. Will you further expand on my question by writing to the committee?

Ms. TOENSING. Yes.

The CHAIRMAN. Senator McCain, I'm sorry I passed you.

Senator McCAIN. Thank you, Mr. Chairman. I apologize for being late. I was in the Arizona delegation meeting about water, and I don't have to tell the Senator from Hawaii what my predecessor, Senator Goldwater, used to say we have so little water in Arizona that the trees chase the dogs. I don't think that's true, but it continues to be a very crucial issue.

The CHAIRMAN. I did get that one. [Laughter.]

Senator McCAIN. So I apologize for being late, and I would appreciate it, Mr. Chairman, if I could have my opening statement be made part of the record.

The CHAIRMAN. Your prepared statement will be inserted in the record immediately.

STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR FROM ARIZONA

Senator McCAIN. Mr. Chairman, it's very easy to adopt a position which has been adopted by previous witnesses here and is the essence of S. 555, that we will allow the Indians to have—basically keeping with the Supreme Court decision—control over class I and class II gaming activities, but to allow the states to regulate class III gaming.

I have two problems with the approach taken in S. 555 with respect to class III games. First, I do not believe that is constitutional; second, I think it is a return to the paternalism which has signified the attitude we have displayed toward Indian tribes.

I'm fascinated that Mr. Swimmer in his statement says that he proposes State control over bingo because it would drive Indian bingo out of business by subjecting it to the days, hours, prizes, and other restrictions of the States, et cetera. I see no reason why the exact same thing would not hold if the States were given control over class III gambling, either, Mr. Swimmer. I find that fascinating that if class II bingo were controlled by the states that you would object to that because of inordinate State regulations, but it's perfectly all right if class III would.

I am also disappointed that Ms. Toensing suggests that S. 1303 as it is presently drafted proposes such an ineffective regulatory structure, we're not optimistic that an acceptable compromise can be developed if S. 1303 is to serve as a drafting vehicle. Then you go on to say, "We will supply the committee with a paper which details our objections." I think it might have been nice if you'd have done your homework and let us know what your objections are without having to ask for your objections, because I think that's why you were called here was to testify on these two bills.

Ms. TOENSING. I have been out of the country for the last 10 days, but as I understand, my lawyers just received your bill last week, and they wanted to do a thorough job on it.

Senator McCAIN. The bill was introduced on June 2. We also had extensive hearings on the same kind of bill for the last two years before the House Interior Committee on which I served. This is not a new issue, nor is it a new piece of legislation. In fact, Congressman Udall introduced exactly the same bill in the House of Representatives in May. I am disappointed that this bill did not get your attention well enough to at least come over and voice some of your objections.

Mr. Swimmer, I'd be glad to hear how you—and by the way, it would be very gratifying to all of us if the FTC, the Consumer Products Safety Commission, all of the other regulatory agencies were also funded by the users, but unfortunately that are not. In fact, they are funded, the other regulatory agencies of Government, are funded with Federal dollars, but we will seek out a regulatory agency of Indian gambling that will be solely regulated by the people who are engaged in Indian gambling. I don't think that's in keeping with the funding of other regulatory agencies of this Government, although in principle I'm certainly in agreement. I would hope that the Justice Department would support all regulatory agencies being funded by the so-called users rather than selecting Indian gaming regulation to be the one who bears the entire burden.

Mr. Swimmer, I would be glad to hear how you differentiate between what the Indian tribes would be faced with in the event that States regulated class III gambling as opposed to the problems that you state in your testimony that they would be faced with if the States regulated class II gambling.

Mr. SWIMMER. Senator McCain, it starts with the premise that we, as a policy, have accepted that bingo can be, and has proven to be in many instances, an effective economic development resource for Indian tribes.

If we were to relegate Indian bingo to State jurisdiction, it could not be played as it is now, because there are only one or two States in the Union that permit any form of high-stakes bingo.

As I mentioned just before you arrived, most States where Indian bingo is being played, they are able to play it only because the State has permitted some form of charitable bingo. And in those States where charitable bingo is permitted they do not have, generally, regulatory commission. They do not have people who are investigating backgrounds, they do not have people on staff that are reviewing whether or not the public is getting a 70-percent payout, a 50-percent payout, or a 30-percent payout. They don't have accountants. They're worried only about whether the church or the nonprofit organization is maintaining its limit on its hours and the pot limits and things like that.

So in those States, if we were to put Indian bingo under that jurisdiction then obviously high-stakes Indian bingo could not be played.

On the other hand, in class III gaming it can also be played, if we were to go with the same principal as bingo, it would be played in those States that permit class III gaming. In a State that permits horse racing, that State has gone to great lengths to set up a full-blown regulatory commission with all of the auditors, with all of the horse inspectors, with all of the gate inspectors, with all of the race track people and everything else that's needed—usually at a cost of millions of dollars—to have a racing commission that, in fact, regulates that activity.

Our position is that if an Indian tribe is desirous of having that kind of gambling activity on its reservation, then there is an existing regulatory agency for it to go to that can help it, that can get it into business, that can help show it how to get into business.

We did provide that in the law—the issue I've heard in Indian country is: well, the States won't let us do it. Well, we have provisions in the law that say if there is grounds that appear to be discriminatory, that a tribe applies for a license and the State simply says, "No, you're an Indian. We don't want you to have one," that there's a remedy in court for that that they cannot discriminate. So in that case you already have the regulatory framework available to you.

If the Federal Regulatory Commission under bingo was to expand to cover hardcore gaming, I mentioned earlier that it's very likely that you could have a horse track, you could have a jai alai, you could have a dog track, you could have a casino, you could have a high stakes card, you could have several of these kinds of activities, but this commission, this Federal commission, would be charged with the responsibility for managing all of them. I daresay there are very few States that permit class III gaming across the board that have the ability to regulate all those things, and the cost would be enormous to bring experts in that could regulate horse tracks, and bring experts in that could regulate jai alai, and bring experts in that could do all this.

So our position would be that where you have class III gaming available and Indian tribes want to do it, use the existing regulatory commission. Don't create another burdensome commission. Don't add to the expense of a Federal commission, let the tribes play the game, let them have the dog tracks, and do it within the existing regulatory framework. The fact is: there is no existing regulatory framework for bingo. If there were I would have the same opinion. Since there is not existing regulatory framework for high-stakes bingo and we're going to support it to provide some economic benefit, we must have some kind of a commission to do it. It appears that a Federal commission is the most reasonable solution to that problem.

Senator McCain. Of course, you are now going on the premise that State regulatory agencies are sufficient, and yet history is replete with examples where there is gambling—including my own State where there has been penetration by undesirable elements into gaming. I don't accept your premise that the existing State regulators are sufficient to prevent what we are, number one.

Second of all, I still do not accept your premise that all they have to do is go to court if they believe that they are being discriminated against, because that same argument could be used in the case of class II gambling as well. Why not put them under State control, as well? There is existing regulatory agencies. All they have to do then is regulate bingo, and if they don't like what is being inflicted upon them by the States then they have the remedy of going to court. Many of these tribes, particularly the smaller ones, don't have the ability, there wherewithal, or wish to go through the bureaucratic maze that can be set up for them which would effectively prevent them from receiving the kind of economic benefits.

I also agree that we should not have a situation where the tribes have to set up gaming enterprises in order to generate revenue. I wish they didn't have to. I wish it wasn't the only source of revenue for the Seminoles and many other tribes that have come up from very destitute conditions as a result of bingo gaming.

But I guess where we differ, Mr. Swimmer, is in the confidence that we have in the states, their commissions, and their ability to give the Indians a fair shake as far as their ability to set up these gaming operations when it is clear in past enterprises, such as smoke shops, such as bingo in some areas, and others, that they have not received that.

I am a little surprised that you would have such confidence in the states and their regulatory agencies. It seems, in the opinion of many scholars, that the *Cabazon* case indicates that the States do not have the legal authority to regulate Indian gaming, and I didn't notice that the Supreme Court differentiated between class II and class III gambling.

I would be interested to hear your response to that.

Mr. SWIMMER. Well, the Supreme Court went to great lengths to justify high-stakes bingo on the Cabazon Reservation, and a couple of pages of the decision explain how bingo evolved from a charitable operation into something that was, in their opinion—and what we in our Department have said before—was something that we thought could be regulated and controlled. As they did not get into a restriction on any other form of gaming, nor did they expand that decision. There is some diversity of opinion as to whether *Cabazon* would expand into class III gaming as it now applies to the reservations in the states, and whether that same decision would be made.

But I'm still troubled because at the present time high stakes gaming does have state regulatory commissions, and your suggestion that maybe they may not be that good I can accpet, on the other hand, the option to that is, as we're talking about today, the creation of a new Federal Regulatory Commission that would incorporate all of those ill begotten State commissions now.

I'm not sure that, after my experience in the Federal Government, that the Federal bureaucracy can establish anything that's going to be any stronger than what we see at the state level. We are saying we do not have a lot of confidence in State regulations, and we're banking very heavily on what this new regulatory commission might be that we're about to set up here in the Federal Government. I contend it's going to be fraught with ills and evils for the first 5 or 10 years just trying to get the thing off the ground.

So when we're talking about a class III gaming operation that does involve all of the bad elements of society that we've heard about, the potential for fraud and abuse, we're saying we have a commission, such as it might be with any State horse commission or gambling commission, and I think that the tribes have access to that type of gaming in those States now if they want to play it.

Senator McCain. Thank you, Mr. Chairman.

[Prepared statement of Senator McCain appears in the appendix.]

The Chairman. Thank you very much.

Ms. Toensing, take care of your throat.

We now have a panel consisting of the Hon. William Houle, chairman of the Fon du Lac Band of Lake Superior Chippewa Indians, and chairman of the National Indians Gaming Association; Mr. Ron Fixico of the Otoe Missouria Tribe and chairman of the Oklahoma Indian Gaming Commission; Herman Agoyo, chairman of the All Indian Pueblo Council; and Lionel John, executive director of the United South and Eastern Tribes of Nashville, TN.

Gentlemen, Welcome. Who will begin?

Mr. Houle. Mr. Chairman, if I may?

The Chairman. Please do.

STATEMENT OF HON. WILLIAM HOULE, CHAIRMAN, FON DU LAC BAND OF LAKE SUPERIOR CHIPPEWA INDIANS, CLOQUET, MN, AND CHAIRMAN, NATIONAL INDIAN GAMING ASSOCIATION

Mr. Houle. Mr. Chairman and members of the committee, I am William Houle, chairman of the Fond du Lac Band of Lake Superior Chippewas. I am appearing today in the capacity as chairman of the National Indian Gaming Association. We submitted a prepared statement for the record, and with your permission, sir, I would like to summarize that testimony.

The Chairman. Your prepared statement will be inserted in the record immediately following your oral presentation.

Mr. Houle. The National Indian Gaming Association is an outgrowth of the Bureau of Indian Affairs effort of the 98th Congress to consult with tribes in order to develop its own position on Indian gaming.

An Indian, so-called Indian Gaming Task Force, was set up. The gaming tribes soon found themselves at odds with the Bureau of Indian Affairs and ultimately set up its own organization. Although National Indian Gaming endeavors to consult and coordinate with other gaming tribes as well as nongaming tribes, we do not represent or speak for all gaming tribes.

As the record demonstrates, there are many viewpoints in Indian Country on the desirability of a legislative approach for any particular legislation. Our membership, which we described in our prepared statement, is geographically divergent and represents all different size games, as well as different types of games.

We, however, exclusively compose of tribes that have bingo or card games. To date the National Indian Gaming Association has supported a legislative approach for Indian gaming. In the 99th

Congress we supported Chairman Udall's bill, H.R. 1920, as reported by the House Interior and Indian Affairs Committee. We actively oppose the Congress Coehlo's efforts to place class III gaming under State control and regulation.

We reluctantly supported the moratorium compromise on class III gaming that was eventually negotiated between Chairman Udall and Congressman Coehlo. H.R. 1920, as so amended, then was passed by the House of Representatives.

On June 10, 1986, the U.S. Supreme Court determined that it would review the decision of the 9th Circuit in *California* v. *Cabazon Band of Mission Indians.* Up to that point all Federal courts that had addressed the issue had held that tribes were able to operate gaming enterprises free of State jurisdiction.

The Supreme Court previously declined to review the decision of the two separate Federal circuit courts that had upheld tribal gaming rights. Given this legal setting, the predominant, though not universal, opinion was there was a significant danger of the Supreme Court reversing *Cabazon*—briefly—but we were afraid that Indian bingo would be lost.

The Supreme Court decision to address Indian bingo strongly influenced the course of events in the second session of the 99th Congress. The National Indian Gaming, along with other tribes and organization, engaged in extensive negotiation with gaming industry representatives and representatives of the States.

These discussions were proported and extremely conflicted an underlying problem that has never been fully resolved. It is the completely unfounded viewpoint that any gaming is unregulated. This viewpoint does not recognize that tribes are governments, and capable governments at that. States are presumed to be inherently competent. On the other hand, tribes are assumed to be incapable of handling their games.

The fact that tribes are running a nationwide gaming industry involving 140 gaming tribes, an industry that will soon enter its second decade, with relatively minimal problems relative to criminal activity and apparently no problems relative to organized crime, seems to have no impact on assumptions or presumptions of tribal competency.

In effect, the waning days of the 99th Congress produced an extremely fragile compromise. The National Indian Gaming Association, with the utmost reluctance, and only in the face of what appeared to be a probable Supreme Court defeat, did not oppose that compromise. This compromise failed to pass the Senate. When the 100th Congress began and the Supreme Court still had not decided *Cabazon,* discussions and negotiations to find the legislative solutions continued. To some extent those efforts are perfectly reflected in S. 555 and H.R. 964.

On February 25, 1987, the Supreme Court of the United States, in a 6 to 3 opinion, squarely upheld the rights of tribes to operate games where such games is not criminally prohibited by State law, free from State control. It is important to note that both cards and bingo games are upheld by the court in the *Cabazon* case.

Following the Supreme Court decision, the members of National Indian Gaming Association reevaluated their legislative position and determined that although the need for legislation has obviously diminished, legislation could still be helpful to tribal interest.

National Indian Gaming Association only supports legislation, however, that does not transfer any jurisdiction to State government over Indian people, their activities, or their lands.

The positive goals that could be achieved in legislation were set out in our April 27, 1987, letter to Senator Inouye, and I quote— Mr. Chairman, I did forget to leave out the "Chairman" Inouye.

The **Chairman**. Quite all right, sir.

Mr. **Houle** [reading]:

> Legislation could codify the Federal posture that gaming is a legitimate aspect of Federal commitment to promote Indian self-determination and economic self-sufficiency. Legislation could provide a system of standards for regulating management contracts as well as to provide for uniform and national standards for executive branch action with respect to gaming. Well crafted legislation could also insulate tribal gaming from what we expect will be new onslaught of challenges from States, as well as challenges from quarters of the Department of Justice.

Since the time of *Santa Ana* v. *Hodell* was decided by a Federal district court held in the District of Columbia, *Santa Ana* adopts the principles of *Cabazon* with respect to class III gaming. As the courts continue to recognize and support Indian rights, the reasons for protective legislation grow fewer. As indicated in our letter, some positive goals can perhaps still be achieved. What is clear now, however, is that the proverbial shoe is on the other foot—tribes will not be held hostage, so to speak, but the fear of losing their valuable gaming industry.

At this point it is beyond any gaming interest and States who strongly want legislation—what they want is legislation to take away rights from tribes, legislation that would protect or enhance their economic interests to the detriment of Indian interests. It always seems the same issue: Whenever Indians have something of value, non-Indian interests, under many guises, mount major efforts to deprive Indians of those assets. We will oppose such efforts.

In want to briefly address some of the theories being put forth to support removing jurisdiction from tribes and the Federal Government.

First off, as we have pointed out too frequently to recount, tribal gaming is not unregulated gaming. We could argue over the scope of congressional power, the so-called power of the Congress in Indian affairs, but we will not. I will point out, however, that even though it borders on rhetoric and ignores some historic realities, the power of Congress over Indian affairs, whatever its breadth, should be used for the Indians and not to their detriment.

The same State interests that were held to be insufficient to justify State jurisdiction in *Cabazon* are being asserted as justification to Congress. From our viewpoint, the Supreme Court evaluation of those interests—mostly smoke and little substance—is compelling.

To these arguments the proponents of State jurisdiction have added a new and somewhat curious argument: Class III gaming is complex, and only the States are capable of regulating it. Presumably the States do what everyone else is capable of doing; they set up a regulatory scheme, finance it, and hire people to operate it, something that is clearly doable at all levels of government.

This takes us back to the old problem of seeming inability to recognize that tribes are governments. Complexity has not precluded tribes from functioning as governments in other areas. In any event, the legislative proposal that we are willing to support has the Federal Government as the primary regulator of Class III.

Two of the primary reasons for continuing to see some benefit from legislation would be: One, the insulation of gaming from continuous attack and the provision of an objective and enhanced system for dealing with management contracts and contractors, adoption of adequate gaming definitions clearly preempting State law would be helpful.

National Indian Gaming Association strongly supports the management contract provision of the bills. The Department of the Interior got off to a slow start in its development of standards for its 25 U.S.C. 81 responsibilities, and still today its standards are short of those contained in the legislative proposal before the Congress.

We have played a very active role in developing these legislative standards. These provisions come from our experience in operating under the negotiated management contracts. Many of the items were contained in tribal testimony before the State Indian affairs committee in its June 16, 1985 hearing. The 5-year limitation on management contracts was recommended in tribal testimony, and its proposal was to foster Indian self-determination, to provide a reasonable time in which a tribe could develop its enterprise, and then evaluate how it wishes to proceed with the gaming enterprise.

These and other specific limitations in management contract requirements are far from being arbitrary standards that some have suggested. They derive from tribal experience and reflect Congress' concern that Indian self-determination and economic sufficiency be fostered in the gaming area.

National Indian Gaming supports the most stringent standards possible in S. 555 and best reflects our position. National Indian Gaming Association believes that all contracts should be held to the proposed statutory standards and strongly oppose the grandfather provision in H.R. 964. It is beyond contemplation that given the concern over criminal infiltration that any potential management contractor should be held to other than a full background investigation called for in the proposed legislation.

A real problem with BIA's existing procedures is that the potential contractors are only screened by a computer record check, and not a full field investigation.

Other problems with the BIA process is that although its standards have continued to improve, early standards were meager and current standards are not equivalent to those contemplated in any of the legislative proposals. We will be submitting for the record our analysis of Congress' power and authority to require modifications in existing gaming management contracts.

Congress has the ability to modify contracts generally when it is acting reasonably to pursue overriding public policy. In addition, congressional power in Indian affairs, when acting as trustee to protect Indians from unscrupulous non-Indians, is extensive. Gaming, generally, is often viewed as a privilege and not a right, and as such is generally afforded less due process protection than other property or contract obligations. Compiling these three factors more than adequately sustains Congress' ability to enact section 14 of H.R. 2507 and S. 1303.

In closing, I want to thank the committee for soliciting our views, and I stand ready to answer any questions you may have.

The CHAIRMAN. Thank you very much.

[Prepared statement of Mr. Houle appears in the appendix.]

The CHAIRMAN. Our next witness is Mr. Ron Fixico.

STATEMENT OF RON FIXICO, OTOE MISSOURIA TRIBE; EXECUTIVE DIRECTOR, OKLAHOMA INDIAN GAMING COMMISSION, TULSA, OK

Mr. FIXICO. Yes; Mr. Chairman. Mr. Chairman, my name is Ronald D. Fixico. I'm the executive director of the Oklahoma Indian Gaming Commission. I am also an operations deputy for the Muskogee Creek Nation Gaming Commission.

We have submitted a prepared testimony for the record for this hearing. Rather than repeating much of what you've heard, the Oklahoma Indian Gaming Commission is in concurrence with many of the positions taken on the issues, and the recommendations made by Chairman Houle of the National Indian Gaming Association.

The Oklahoma Indian Gaming Commission is made up of 15 member tribes in the State of Oklahoma. We have worked diligently to provide standardization of a code of ethics that we conduct our games by. Certainly, the Oklahoma Indian gaming tribes are concerned with our industry.

We are limited by our abilities at this time. We ask that the Federal Government take some type of action. It's always been the desire of the Oklahoma Indian Gaming Commission to work within the framework of the applicable Federal law.

We trust that the Federal law will be of minimum hindrance to our development. The people that I represent—we understand that there's lack of documentation on exactly what goes on inside Indian games, but you need to—our situation, I believe, in Oklahoma, is that we have an adverse relationship with our State in that the State of Oklahoma desires to tax Indian gaming; therefore, the gaming tribes in Oklahoma are very reluctant to disclose any type of information connected with their games in fear that it would be used against them.

So, Mr. Chairman, if you would consider that reason as why there's some limited information.

We believe that we are in the beginning stages of organizing and developing an industry that provides jobs and opportunities to the Indian people, and I think that sometimes that the Indian people are—there's a misunderstanding. People have a concept that we're interested in gaming just for dollars. It's not just for the money that we're involved in this, but we also have been able to provide training and accountability to our tribal governments, as well as utilizing our abilities on a personal level.

The Oklahoma Indian Gaming Commission, we believe we have enough expertise on a regional basis to take care of some of the desires of a national gaming commission. We're very much interested in legislation. We're very committed to developing our industry.

Gentlemen, maybe a little brief, but like I stated, we are an industry. We do have industrial problems that need to be addressed. Not everyone has the answers, but the last time the tribes got together we talked about the opportunity available and the fact that in the United States the opportunity is available if people are willing to work those long hours and willing to travel miles and meet together and exchange ideas. We've done these things, and are going to continue to do these things.

I don't know how long this legislative process is going to last, but I can assure you that the Indian people that are associated with the gaming industry in Oklahoma, as well as our vendors and suppliers, and some of the contractors, we're interested in upgrading and becoming accountable because it's in our best interest, and it's also in the interest of the U.S. Government, which the tribes recognize we have a relationship with.

With that, if there's any questions, I'd like to answer them. Mr. Chairman, I thank you for hearing these remarks today.

The CHAIRMAN. We will be asking questions when the panel is completed.

[Prepared statement of Mr. Fixico appears in the appendix.]

The CHAIRMAN. Our next witness is the chairman of the All Indian Pueblo Council, Mr. Herman Agoyo.

STATEMENT OF HERMAN AGOYO, CHAIRMAN, ALL INDIAN PUEBLO COUNCIL, ALBUQUERQUE, NM

Mr. AGOYO. Uń Wowa Thamü. In my native language, a blessed good morning.

As chairman of the All Indian Pueblo Council I bring you the blessings of my elders, the greetings of my governors who are descendants of the first Americans and representatives of an ancient civilization.

Before I continue with my oral remarks I'd like to say that with your chairmanship—Senate Select Committee on Indian Affairs—we see a real hope for improved Federal-Indian relationships, and that we look to better times for the Indian people. My governors have asked that I extend an invitation to you, Mr. Chairman, and the rest of the committee members to visit our country whenever you have the time to do so.

With your permission I have an oral statement that I would like to present.

Mr. Chairman, members of the committee, my name is Herman Agoyo and I want to thank you for inviting me to this hearing. I am indeed very honored to be in your presence.

We have previously filed a written statement with the committee, and I would like to use my time here today to emphasize one point which we made in our written statement.

Although we support Federal legislation to regulate Indian controlled gaming, we do not and will not support State jurisdiction. For this reason we support Senate bill 1303.

Those who advocate State jurisdiction seem to calmly raise two arguments: First, tribal government lacks the capacity to handle gaming; second, organized crime will infiltrate tribal games.

With respect to the capacity of tribal governments, several facts should be used and noted. The Pueblos have been self-governing for centuries. Although some of our governments are now organized under the Indian Reorganization Act, many continue with traditional form of government for hundreds of years. Our governments predate the U.S. Government and many European civilizations, and we have withstood the attempts by both Spanish and American Governments to diminish or restrict our government.

It is the very least somewhat ironic to realize to hear that we lack the capacity to govern ourselves. Our neighbor, the State of New Mexico, is now celebrating its 75th birthday as a State. We, on the other hand, have been governing ourselves for over 750 years. When New Mexico became a State 75 years ago the Congress required New Mexico to disclaim jurisdiction over Indians on Indian lands. New Mexico voluntarily agreed to this disclaimer of jurisdiction, and the disclaimer clause is still part of the State constitution.

From our point of view, both the Congress and the State of New Mexico recognize our right to continue to be self-governing through that disclaimer clause. In fact, the U.S. Constitution also recognizes our government by placing with Congress the authority to regulate trade and commerce with the tribes.

We are a part of the Federal System of the United States in much the same way that the States are. Proposals to place Indian gaming under State jurisdictions are contrary to the U.S. Constitution, the New Mexico Constitution, and 200 years of Federal policy to recognize and promote Pueblo self-governance.

The other argument raised in support of State jurisdiction relates to the fear of organized crime. When the tribes first became involved in gaming there was a lot of talk about how organized crime would take over. This has not happened. There is absolutely no evidence of organized crime in Indian gaming. The tribes aren't about to let organized crime elements to become involved in any tribal activity. To the best of our knowledge organized crime is not a problem on the reservations. There is not any Indian organized crime.

We tend to think that the whole argument about infiltration of organized crime is making a smoke screen. The real concern is an economic one. The States and organized non-Indian gaming interests simply don't want to have to compete with Indian-controlled gaming. This is not sufficient justification for placing Indian gaming under State control.

We urge this committee to reject any proposals to place Indian gaming under State jurisdiction. We urge you to uphold the Federal tribal relationship as it existed and as is mandated by the U.S. Constitution.

We pledge to you our fullest cooperation as you work to fashion legislation which will promote tribal self-sufficiency and ensure the integrity of Indian-controlled gaming.

Thank you very much.

The CHAIRMAN. Thank you very much, Mr. Agoyo.

[Prepared statement of Mr. Agoyo appears in the appendix.]

The **Chairman**. Our next witness is the executive director of United South and Eastern Tribes, Mr. Lionel John.

Mr. John.

STATEMENT OF LIONEL JOHN, EXECUTIVE DIRECTOR, UNITED SOUTH AND EASTERN TRIBES, NASHVILLE, TN

Mr. **John**. Good morning, Mr. Chairman, members of the committee. I'm Lionel John, the executive director for the United South and Eastern Tribes from Nashville, TN.

This morning I'm going to submit a written statement to the committee for you consideration, and reduce my remarks to a few oral comments.

I will try not to be repetitious with what some of the other fellows have testified to today, but I do want to emphasize a few key points that some of the tribes in the east are concerned about with the proposed legislation.

One of the sections that we are concerned with is section 4, which relates to Internal Revenue collections. We're opposed to any indication where Internal Revenue would be collecting taxes from the tribal bingo operations. In short, we don't want to have to be acting as collection agencies or tax collectors for any of the taxes that IRS is hoping to attach.

There are a number of treaties in the past history which state that Indian tribal governments will not be taxed, and we wish that those be recognized and upheld. That's a major concern of our, and we would hope that you committee would take appropriate action on our behalf.

We do have additional concern with the concept that's being designed in consideration of the Commission. It appears, from the style that we're looking at, that the Commission is going to be divided. It appears that a chairman is going to be appointed and that chairman would be under some control and powers from the Executive Office, the President of the United States, through the Secretary, of course.

We do not understand why there should be a separation of function and powers between a commissioner and a chairman. We think that a commission should act as one. The thing we worry about more specifically is that it seems to vest greater powers in the activities of the chairman and the Indian members that are being proposed as part of the Commission would have a lesser voice in what's going on. That's a bit worrisome. We think that if a commission is going to sit that it should be so that it can act equally on behalf of Indian issue.

We do have another concern in respect to the implementation process of a piece of legislation of this order. There's reference in the bill that indicates that the Secretary will develop interim regulation, and that in due time when the Commission gets organized and operable that the Commission would continue in further regulation development.

We don't know if we can place confidence in that type of arrangement in that the Secretary may style regulations in one way or another, and once those things get in place, its often very difficult to back away from that and get different regulations in place. We think that what should be done is a shorter time frame be placed on the development of any regulation and that the Commission be put together as quickly as possible, we even suggest possibly no more than 180 days that this Commission be activated so that it can proceed to do business and that we don't have to have interim things getting in the way.

We, of course, object to any indication that the States would have any control or any say in gaming activity. Our relationship, as we cherish it, is with the Federal Government, and we believe that the tribal sovereignty stands among this as being the almighty center for us, so we think that anything that's written up shouldn't include any State intervention.

We feel, in Indian country, that the recent Supreme Court decision in *Cabazon/Morongo* clearly set out what the jurisdictional paths are regarding State and tribal relationships.

We have testified many times before, and we have tried our best to demonstrate the integrity of Indian gaming, and we have demonstrated how important and how effective this new source of revenue is to Indian communities with the many, many fine things that are going on, on many reservations, and has softened the blow of some of the cutbacks in some of the Federal appropriations. It's been a nice mix in that respect, and it has made it easier for Indian people in that they have got something to fall back to.

So we hope that you will help us protect this newfound income source and keep it viable for Indian people so we can go on and better our communities and our people.

With that I thank you for having this opportunity to comment this morning.

The CHAIRMAN. Thank you very much, Mr. John.

[Prepared statement of Mr. John appears in the appendix.]

The CHAIRMAN. I'd like to assure all witnesses that your prepared statements will be made part of the record in total.

One of the major arguments presented in support of gaming on Indian lands has been that it is an important source of revenue. May I ask all of you: what percentage of employees involved in these gaming activities are Indian?

Mr. HOULE. Well, at the Fond du Lac I can speak for our reservation. We have about 90 percent that are Indian employed.

Mr. FIXICO. Mr. Chairman, with respect to the Muskogee Creek National gaming operation in Tulsa, OK, 98 percent of the people employed there are Indians. We have approximately 134 total employees; between 77 and 82 percent are Muskogee Creek Indians, the remaining number being made up of Indians of other federally-recognized tribes. We have two non-Indians, the general manager and one of the assistant general managers.

Just recently, within the last 2 months, a member of the Muskogee Creek Tribe assumed the position of business manager, so that has to do with one tribal operation that we own.

In the other two tribal operations that the Muskogee Creek Nation owns is total employment by tribal members—respectively, 20 in one operation and 22 in another.

Mr. AGOYO. Senator, I'm from San Juan Pueblo, and we do have a bingo business at my pueblo. Of the 34 employees, only 2 are non-Indians.

Mr. JOHN. Mr. Chairman, I'm a member and a past tribal leader for the Seneca Nation of Indians in New York State. Speaking for that tribe who runs two bingo operations up there, they employ 100 percent Seneca people and 100 percent of the revenue goes into tribal and community operations.

The CHAIRMAN. Most of the tribes, if not all of the tribes that you represent, have significant numbers of members, but we have been advised that in certain places we have gaming activities carried on by rancherias or bands with less than 20 members, of which 7 are adults. Do you think a tribe with 7 adults and 13 children would be large enough to carry on a tribal government?

Mr. HOULE. I don't want to answer that on behalf of that particular tribe, but speaking——

The CHAIRMAN. This is not hypothetical. This tribe has a gaming activity, and I just want to know, because one of you suggested that your organization has been in existence for seven centuries, and I don't doubt that. You are a highly civilized people and I admire your culture, but I am just asking whether you think a tribe or a nation consisting of 7 adults and 13 children would have sufficient resources to govern themselves in handling a gaming activity.

Mr. HOULE. I don't have an answer for that.

Mr. AGOYO. Senator, If that tribe is recognized by the Federal Government as a tribe, then I think that they have that right to have their own government, and probably more so than any other tribe they need that industry to upgrade their lives and operate their form of government.

The CHAIRMAN. Do you feel the same way?

Mr. JOHN. That is a difficult question. I do agree that every tribe has its own right to do business however they see fit, and I think your example is probably an exception; however, I recognize that the condition does exist, and I'm not sure that I can give a good answer on behalf of this tribe, whoever they may be. I guess if anything could be said for it, we would hope that the tribe would surely benefit, and if they are that small a group, then that tribe should be made well off and may do without any Federal support beyond tribal gaming operations. I don't know that, of course.

There seemed to have been a certain degree of community resistance in and around where tribes set up bingo operations, for example. It took a little while for these communities to get used to what was going on.

But one of the things that communities generally fail to recognize is that when there's an operation of any sort, whatever type of business a tribe is involved in, that there is generally a spinoff effect, that there's a rippling effect throughout the entire community, and that the whole area benefits economically. I guess from that view it's probably a good thing. It helps to pull people together as far as communities are concerned. Sometimes we have barriers among people and when they find out that everybody can benefit to some degree or another sometimes it works out that way.

The CHAIRMAN. I asked that question not facetiously because technically you can have a tribe made up of five people that would qualify under this bill. Just recently a rancheria went out of existence because the last member died, and technically that last member, under this bill, could have contracted for services and opened up a gaming activity. I'm just wondering if that's what you have in mind, or should we set a limit?

Mr. HOULE. Mr. Chairman, I think in some situations in Minnesota, as well as in California, I understand there's small townships that are allowed to operate as governments and numbers never enter into a factor. I don't know the situation in California in regards to the rancherias, but I would hope that the situation where the last member died never happens to Fond du Lac.

The CHAIRMAN. Secretary Swimmer suggested a referendum. What are your thoughts on that—to have tribal members, voting members, decide whether you should have gaming activities on your land?

Mr. HOULE. My answer to that, Mr. Chairman, certainly is that we operate as any government. We have district meetings in the three districts of the reservation, we talk about our economic development plans and get input in that fashion. I don't think it's necessary to impose an election on a reservation. That's very costly, and we have a need for those dollars and better use for them.

Mr. FIXICO. Mr. Chairman——

The CHAIRMAN. Are your officers elected?

Mr. HOULE. That's right. We're elected every 2 years for 4-year staggered terms.

The CHAIRMAN. Would it be at no cost to just add another line to your ballot?

Mr. HOULE. We have done that in the past, Mr. Chairman, on situations which dealt with land situations, but development types of situations we have not put on the ballot, and I don't agree with the Secretary on that issue.

The CHAIRMAN. You do not think the people should be heard?

Mr. HOULE. That's not what I'm saying, Mr. Chairman. What I'm saying is: we already accomplished that by meeting in the districts on our 10-, 5-, and 20-year plans for economic development and in that way get their input.

Mr. FIXICO. Mr. Chairman, the Muskogee Creek Nation has legislated upon the decision to engage in gaming by virtue of the National Council, that's 28 elected members from the 8 districts that compose the Creek Nation's jurisdiction, so we believe that we've got the voice of the people's support behind us on the gaming issue.

Mr. AGOYO. Senator, I represent the Pueblos, who have their own traditional form of government, and with the exception of a few Pueblos that have adopted a constitution we have our own way of getting input from the community. This proposal to include a referendum in the Senate bill is just another white man's thinking on it. Each government should determine for themselves how they would like to get input from their community members.

Mr. JOHN. Mr. Chairman, I'm not sure myself where the Assistant Secretary derives his question from; certainly he must have a problem in mind. But in most instances the tribal governments have gained tribal approval. The ones that are running bingo have already run through this gamut. They've gotten the assurance from the population that this is something that is wanted and needed on the reservations.

I am aware of a couple of locations where there was a dispute among the people as to whether to proceed with a bingo operation or not, on a particular reservation; but there again that type of issue is the domain of the tribal government, and it is up to that tribal government to resolve their problem, and generally they will. It may take a little bit of time for them to reach that decision, but they will reach it, I can assure you that.

So if there is difficulty, it probably won't be for long.

The CHAIRMAN. Senator Evans?

Senator EVANS. Let me ask Mr. Agoyo: On page 8 of your testimony you note that the operations of the commission—and this is speaking of an independent Federal commission—should be funded entirely from Federal appropriations and that no other Federal regulatory entity is funded through an annual assessment of the entities it regulates. I don't think that's really true. It is quite common that we have charges on those who are regulated, and it seems to me that it is quite an appropriate thing to do—to have the regulatory agency not be subjected to all of the taxpayers, but rather be handled by those who are regulated. It is quite common.

Mr. AGOYO. Well, Senator Evans—I think you and Senator McCain have to get together and discuss that—but I think as far as Federal Indian tribal relationship, this clause would be something new, and I think it would be a detriment to building an economic base when you know right from the start you're going to present some kind of form of taxation, and maybe somewhere down the future that might be possible, but I don't see it right from the beginning that that's a good move.

Senator EVANS. Well, do you think people of the United States, through general taxpayers funds, ought to support the regulation of the gaming commission of the State of Nevada?

Mr. AGOYO. I'm not so sure now the gaming industry is run in the State of Nevada so I can't answer that.

Senator EVANS. I don't either, but I know that we don't fund it. Taxpayers in Washington and Oregon and New York and the rest of the States don't fund it, and I doubt very much if the taxpayers, generally, in the State of Nevada support it. I think it's supported by the money that they get from the operation of the gaming operations in Nevada.

Mr. AGOYO. Well, I think that would be a good goal to work toward, and as we deem profits from the business—you know, we like to do our share, but from the beginning it's going to hamper us.

Senator EVANS. I gather that you think the regulatory commission is a good idea.

Mr. AGOYO. Yes.

Senator EVANS. But you do think that it is a function that ought to be funded by the general taxpayer of the United States.

Mr. AGOYO. Yes, sir.

Senator EVANS. OK. How about the rest of you on the panel.

Mr. FIXICO. Sir, the Oklahoma Indian Gaming Commission—we support assisting to finance a national gaming commission to a limited degree with the understanding that moneys saved by the tribes go directly to the tribal treasury for beneficial purposes for the tribal governments, and that it's not, perhaps, different in Nevada where profits go directly to a corporation or individuals. This goes to the tribal government and it's used for solid purposes such as health, education, and welfare.

I would like to say that the Muskogee Creek Nati[illegible] operation in Tulsa, being in a metropolitan area, has provided generous dollars for the tribe, but certainly the tribe hasn't really made that much benefit from it because we've had to supplement cutbacks in our budget. So although people talk about large sums of dollars, we understand that while we're working for making as much profit as we can for the tribe every dollar we save, whomever we have to sit down and negotiate this out with, is beneficial to the Indian people.

Senator EVANS. I thoroughly agree. I think it is exactly where whatever money is saved ought to be designated. It seems to me that there are two elements—two pieces of the money that are necessary in State-run gambling operations, whether they're bingo, parimutuel, or casino gambling, there's a certain relatively small share which is necesssary for the funding of the regulation itself. There's a much larger share which is frankly the equivalent of a tax which goes to the State. In fact, if there were a decision to charge to the enterprise itself, the cost of regulation, that should be only that, and with whatever kinds of savings which result from regulation it is these benefits which ought to accrue to the tribe.

Frankly, I'm not much of a fan of some of the gambling operations that have been set up by States, particularly State lotteries. For those who are into gambling or of a gambling nature the biggest scam in the country is State lottery. You wouldn't allow a Las Vegas casino to ever operate on the basis of taking half the resources away in terms of the house. They do very well on a few percent. But the States take half of it away. Essentially it is a tax. That's the way they run things, but presumbaly do so because there are benefits for taxpayers. It's a hidden way of getting tax money for support of people. But I do think that the enterprise itself ought to at least participate in the regulation of its own activities rather than expect someone else to do it.

Mr. JOHN. Senator Evans, I'd like to comment on your question. United South and Eastern Tribes has been involved in gaming legislation development for the past 4 years, and recently in the last Congress we supported or put forth a piece of legislation which your colleague, Mr. DeConcini, introduced; that was S. 902 in the last Congress.

A lot of the elements of S. 902 touched what you're talking about. In the makeup of a commission in S. 902 the USET tribes endorsed a provision to support the cost of a commission, but there was a theory behind it that we felt that if we are going to have a commission that was going to regulate ourselves, then we ought to pay for it. If the government is going to have a regulation that's going to control the operations, then they ought to share in the pay for it. So it seemed that we are working toward that kind of compromise, that there would be something arranged that would be suitable for that. That was the position that we went on record with a year or so ago.

Senator EVANS. So you're really saying that to the degree that the regulation is felt necessary by the tribe, the tribe ought to fund it. And to the degree that Federal agencies felt there was need for further regulation or supervision necessary at the Federal level and by the Federal Government that they ought to pay for that share?

Mr. JOHN. Yes; the key issue there was control.

Senator EVANS. Yes; thank you, Mr. Chairman.

The CHAIRMAN. Mr. Burdick.

Senator BURDICK. Thank you, Mr. Chairman.

The three of you testified that Indian employment in the gaming operations were in the 90 percentile area—one gentleman testified that it was all Indian employment. Speaking from right to left, my left to your right, what kind of responsibilities do the non-Indians have on your particular reservation?

Mr. HOULE. Well, most of the non-Indians are employed in areas of security and some middle management.

Senator BURDICK. What kind of—how important in the management?

Mr. HOULE. How important? Well, I would think directly under the executive director—a very important position in which we are training one of our own members for.

Senator BURDICK. Next gentleman?

Mr. FIXICO. Sir, you're asking about the gaming operation, is that correct?

Senator BURDICK. Yes.

Mr. FIXICO. Inside the gaming operation the Creek Nation utilizes a general manager with approximately 10 years expertise in bingo games. He performs, you know, the administrative functions. There's also an assistant manager; he mostly draws up the advertising and functions like that, assisting in the game, running statistics, and things like that.

Senator BURDICK. In other words, the manager and the assistant manager are not Indians?

Mr. FIXICO. Yes, sir; that is correct.

Senator BURDICK. How about the next gentleman?

Mr. AGOYO. The same is true for my pueblo. The two non-Indians represent the management contract we have, and its no different than running a sand and gravel business or any other business. We want the best people to run our business.

Senator BURDICK. Well, I understand that. I understand sand and gravel, too, but I just wanted to know if the Indian people were managing it.

Mr. JOHN. I spoke of the example from the Seneca tribe, and in that instance I said it was 100 percent run, which is including management. It employs a little over 100 people part time or full time. I guess the only time it goes outside for any service is the tribe hires an independent audit company to come in and audit the records on an annual basis, and that's the only time they involve anybody else.

Senator BURDICK. You testified earlier that you had 100 percent Indian employment, I believe.

Mr. JOHN. Yes.

Senator BURDICK. These two gentlemen in the center here said that the management was non-Indian. Do they handle the money also?

Mr. FIXICO. Sir, I'd like to clarify something. The Creek Nation owns three operations. What I was describing to you was the major operation in Tulsa. In Bristow, OK, it is managed by a tribal member, and in Okmulgee, OK, for the next 60 to 90 days, sir, I'm managing the operation. In response to your question about handling the moneys, the general manager at the $1 million facility in Tulsa does not touch the money, sir.

Mr. HOULE. Sir, I'd like to clarify my response somewhat similar to that. We have two operations. In the operation that's operated in downtown Duluth we have the training concept in mind, but in behalf of the National Indian Gaming Association, 85 to 90 percent of those operations are owned by the tribe and operated 100 percent by Indian people. So I was speaking in behalf of Fond du Lac when I did say that middle management and 90 percent.

Senator BURDICK. Let me get this straight: you're talking about Fond du Lac area?

Mr. HOULE. That's correct.

Senator BURDICK. Is the manager there Indian or non-Indian.

Mr. HOULE. The one on the reservation is Indian managed, and the one that was recently acquired within the City of Duluth is run by a non-Indian, but with an Indian trainee.

Senator BURDICK. Thank you.

The CHAIRMAN. Senator McCain?

Senator MCCAIN. Thank you, Mr. Chairman. I'd like to mention to my colleague from Washington, my point was that, in response to Mr. Swimmer's statement that the regulatory commission should be fully funded by proceeds from the gaming operations that I know of no other—there may be—but at least I'm sure that the overwhelming majority of regulatory agencies here in Washington, although maybe they are partially funded by revenues from taxation on the operations they regulate, the vast majority of them also are Federally funded in their activities. That's why I took exception to Mr. Swimmer's premise that it should be fully funded. In this bill there is a provision for partial funding of the revenues from tribal games to pay for the regulatory commission.

Senator EVANS. If I may—I hate to interrupt my colleague from Arizona, but there is a question I did not ask, and perhaps someone may want to make a comment. We are faced with extraordinary difficulties currently and probably will be for some time to come, in regards to the overall Federal budget. If we are to add a new expenditure in terms of regulation of gambling on reservations, the most likely source of that new revenue will not be from outside the current budget, but rather would require a shift in some aspects of the current budgets devoted to Indian affairs. I'm not so sure that there is great enthusiasm to take it from higher education, scholarship funds or from other kinds of activities. I would also suggest that a good many tribal members who don't engage in gambling would not be very happy about that either.

Senator MCCAIN. Well, I certainly think that my friend from Washington and I share the same philosophy. My question, of course, is that: Should we force the Indian tribes, which I would suggest are least capable of all of those groups and organizations that are regulated by the Federal Government, to be the first to be fully funded by the proceeds from their operations? I would support and hope that we could get every Federal agency that regulates some business or industry to have that fully funded by the people they regulate, but to choose the Indians as the trailblazers in this effort I would suggest is probably selecting the poorest segment of our economy in America to be the leaders in achieving a goal that we both share.

Senator EVANS. I would thoroughly agree with the Senator that we should not provide that kind of trailblazing. It may be useful for the staff to examine some of the typical Federal regulatory agencies to see under what circumstances they operate in relation to the special fees that are assigned against those industries. It may be useful to examine bank regulation, the FAA, the Securities Exchange Commission, Fannie Mae, and the others. I don't know what we'll find, but I wouldn't be at all surprised to find that in many of those circumstances the fees not only cover the full cost of their budget but brings in a net amount to the Federal Treasury. But I think it might be useful for us to find that out so that we don't engage ourselves in putting an extra burden on tribes that we do not put on anyone else.

The CHAIRMAN. The staff will be so advised.

Senator MCCAIN. Thank you, Mr. Chairman. I would like to point out again that in both bills that are under consideration there is a provision for some tribal gaming revenues to be used to fund the gaming Commission.

In the interest of time, Mr. Chairman, I'll be very brief. Mr. Houle, I think your statement about the viewpoint that States are somehow free of scandal in their regulation of gambling, and the assumption that tribes would somehow fall prey to this is a very cogent one. In fact, there have been States across this country from Connecticut to Nevada where there has been penetration of organized crime in numerous scandals that have evolved. Before we blithely assign the regulation of Indian gaming to the States, it might be well to reexamine the aspect of what kind of supervision that the tribes would actually get.

I also would think it would be of some value for the members to inform the committee if they are or contemplate engaging in any class III gambling, and do they contemplate that if legislation such as my bill proposes, S. 1303, or S. 555, would all of a sudden open the door to a dramatic increase in class III gaming activities?

We'll start with you, Mr. Houle.

Mr. HOULE. Mr. McCain, I would like first to share with the committee some of the problems that we have had, and it will reflect that we do have an excellent system. Within the last year we've had the opportunity, through our sophisticated security system, to indict or bring charges against two individuals—six individuals, rather, at the new operation and one at the operation on the reservation, a person who was traveling on a kind of a circuit attempting to defraud the reservation businesses.

With our system that's in place we were able to catch these gentlemen and bring charges with cooperation with the local authorities.

But I think in answer to your question, with members of the National Indian Gaming Association there are some tribes, I understand, that are doing parimutuel and anticipating like horseracing, and I'm not too sure just what stages they're in. But I do know that the National Association is pushing toward regulation by the Federal Government rather than regulations by the State.

Mr. FIXICO. Senator, with respect to your question: The Oklahoma Gaming tribes—I'm not aware of any tribe that is signed on to class III gaming activities, that is horseracing is of particular interest. I know tribes have entertained people who've come in and propositioned them, but no one has made a commitment yet.

One thing else I would like to point out is that Oklahoma, like Mr. Swimmer pointed out, has county option on horseracing. With approximately 29 Indian bingo games in Oklahoma we've pretty much hit the saturation point for gaming dollars. In the State of Oklahoma and the parimutuel horseracing it would be very difficult to say whether or not a tribe would find it feasible to get into an oversaturated market. The gambling buck only goes so far, and I think in Oklahoma we're starting to realize that. It's a tough job out there making a dollar for the tribe, and whether—you know, if we can run ponies and make a dollar for it, we'd certainly listen to the idea, but not today.

Mr. AGOYO. Of the tribes or Pueblos that are into bingo, my sense is that they want to make a success of what they have going now before they would venture into other types of gambling.

Mr. JOHN. Senator McCain, at the present time I'm not aware that any of the Eastern tribes have shown any interest in a class III operation. There are none operating today that would fit into that category. The only thing I can think of is that if a tribe were to endeavor into any class III type activity, I would put a lot of faith in the integrity of the tribe. You know the tribes are very, very sensitive about the status of their reservation lands, and they're very sensitive that things be done right. I'm sure that they are going to take extra precautions to ensure that they get the best thing going for themselves and are going to very carefully guard anything that could be detrimental to their people.

Senator MCCAIN. And I'm sure that the tribes are very aware that people aren't going to come and gamble where they believe there's not the most honest and straightforward operations, and its the best interest of the tribes, as well as the people who engage in gaming, that there be every assurance that they are receiving a fair opportunity, although as my colleague from Washington mentioned I'm not sure that State lotteries fall in that category.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much. We appreciate your assistance this morning.

Mr. HOULE. Mr. Chairman, I would like to, at this time, personally thank you for your efforts and consultation with the tribes. I wish that effect would rub off on the Assistant Secretary.

The CHAIRMAN. Our next panel will be divided into two parts. The first part will consist of: the Honorable Tom Alley, representative of the Michigan State Legislature, Mr. Ian Macpherson, chief of the Tax Division Office of the Attorney General, State of Arizona; and Mr. John Duffy, sheriff of San Diego County, speaking in behalf of the American Sheriff's Association.

Representative Alley.

Is Representative Alley here?

Is Mr. Macpherson here?

Mr. Macpherson, please proceed.

STATEMENT OF IAN MACPHERSON, CHIEF COUNSEL OF TAX DIVISION, OFFICE OF ATTORNEY GENERAL ROBERT CORBIN, STATE OF ARIZONA, FOR THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Mr. **Macpherson**. If I may, may name is Ian Macpherson. I am the chief counsel of the tax division of the Arizona Attorney General's office. I appear today on behalf of Attorney General Corbin, as well as at the request of the National Association of Attorneys General, to share with you the concerns of the law enforcement community not only in the State of Arizona but with respect to the National Association of Attorneys General with respect to this most important topic: gambling within the exterior boundaries of the Nation's Indian reservations.

I would also wish to convey the regrets of Attorney General Brian McKay of the State of Nevada who, due to prior commitments, was unable to attend the hearing this morning, but with the permission of the Chair would request that Attorney General McKay's statement be included in the record.

The **Chairman**. The prepared statement of Attorney General McKay will be inserted in the record.

Mr. **Macpherson**. If I may, I wish to first commend both the U.S. Senate and the U.S. House of Representatives and their respective Members for their efforts in preparing and introducing the various pieces of proposed legislation on this subject.

These initiatives hopefully will bring these matters, which have perplexed both the Indian tribes, the States, and the Federal Government for years, to a just and final conclusion.

The questions which you address in your hearings are extremely important and deserving of thorough debate and consideration. However, as Attorney General Corbin testified on prior occasions, notably with respect to S. 902 and H.R. 1920 in the 99th Congress, and as the National Association of Attorneys General Resolution of June 10 of this year states, it continues to be the strong belief among the law enforcement community of the States as well as, apparently, the Department of Justice through the testimony of Victoria Toensing, that the prime responsibility for establishing and enforcing public policy on matters with as particularly localized an impact as gambling, is uniquely within the province of the States rather than the Federal Government. Moreover, it remains Attorney General Corbin's position that this historical circumstance should continue to guide the analysis in this area.

In the interest of moving along and saving some time, what I think I would like to do is depart from the prepared comments—I'd be happy to answer any questions with respect to them, of course—and address a few of the points that have been brought up thus far this morning with respect to a variety of topics, perhaps at the risk of opening a Pandora's box. Perhaps we could just look at the box before we open it up.

The *Cabazon* decision of the U.S. Supreme Court I'm quite familiar with. A point of fact, I authored the Amicius Curiae brief in the case that was signed on to by the States of Nevada and New Mexico.

To begin with it is the State of Arizona's position, at least, that the *Cabazon* decision—and we think that this must be remembered as well—is not a unanimous decision. It was a 6-3 split decision. The majority opinion, indeed, provides that in a Public Law 83-280 State such as California the State may not rely upon that Federal law to prohibit within Indian country that which it merely permits and regulates beyond Indian country.

The decision, however, I would point out—and this is in the prepared comments as well—in our view makes it clear, particularly I'd direct the committee's attention to footnote 10 of the opinion, that with respect to what would otherwise be characterized under these bills as class III gaming, it remains the position—at least apparently if the footnote articulates the opinion of the majority accurately—that class III gaming, if it is a prohibited activity under State law, would not be authorized to go forward, at least under the Supreme Court's opinion.

In point of fact the Court goes to some lengths in the footnote to describe two of the central cases on that point, the *Marcyes* decision and the *Farris* decision, both of which recognize that with respect to activities or acts that a State, through its freely elected representatives, have established to be prohibited, that they don't want it, even if there be limited exceptions to the general prohibition, are prohibited. In point of fact those two cases, in both instances, the activities that were ongoing—one involved fireworks, the *Marcyes* decision; *Farris* involved a prosecution of the Organized Crime Control Act of 1970—the State law was recognized as prohibitory in nature. That principle, I would submit Mr. Chairman and members of the committee, is something that must be kept in mind in an analysis or an examination of the bills presently pending.

I for example, don't see anything that comes out and actually says that a class III gaming activity, which is clearly prohibited by a State, may nevertheless be authorized to go forward. In the State of Arizona, for example, that is one of Attorney General Corbin's major concerns, and the record will reflect that with respect to S. 902 and H.R. 1920 in the 99th Congress there was discussion of a class III activity being proposed in Arizona involving a parimutuel jai alai fronton. I happen to be record counsel in that case as well, so I'm familiar with that.

In any event, we don't view the *Cabazon* decision as standing for the proposition that class III gaming may go forward carte blanche with nothing more.

Now, few people would deny the power of Congress to go forward and say that that's all right, that you can go ahead and do that. I wouldn't find anything unconstitutional about that; but the point is: the *Cabazon* decision says what it says and there's no denying that. At the same time, those groups that would take solace in the *Cabazon* decision as articulating the principle that we don't need

Federal legislation in the area, I would submit, are reading a bit too much into the decision.

With respect to the situation in Arizona, if I may very briefly, the jai alai case has been pending now for approximately 3 years. It involves a situation where some non-Indian entrepreneurs have approached an Indian tribe and have entered into a variety of arrangements and proposals to construct a parimutuel jai alai fronton just south of the metro Phoenix area. They filed two lawsuits, one by the non-Indian entrepreneurs, one by the Indian tribe against Attorney General Corbin, seeking a declaratory judgment and an injunction against Attorney General Corbin with respect to the enforcement of Arizona's antigambling laws with respect to that operation. It has been pending, as I say, now we're going on three years. The fronton has not been built.

So far as we can tell there have been no actions taken to actually break ground; however, following the *Cabazon* decision the non-Indian entrepreneurs dismissed their lawsuit. Actually they had responded initially to a prior motion to dismiss that we had filed by withdrawing their opposition to the motion to dismiss, and in fact the non-Indian component of that lawsuit has now been dismissed.

One of the reasons that there is some cause to believe that the issue has not been resolved is that in their motion to voluntarily dismiss they cited in support the *Cabazon* decision, apparently for the proposition—again, I don't mean to argue their case—but apparently for the proposition that they didn't need a declaratory judgment or an injunction any more, nor any Federal legislation, and supposedly are considering going forward with construction of the fronton.

Now, whether or not Attorney General Corbin wil take action as a result of that I simply don't know at this point. The last we had heard they had not broken ground. This is illustrative, I would submit, of the point that there continues to be—I've described it as testing of the waters with respect to what is and what is not allowed as a matter of Federal law and as a matter of law under the *Cabazon* decision.

Another point I'd like to touch upon, which is of some sensitivity, relates to the topic of taxes. I am the chief counsel of the tax division of the Arizona Attorney General's office. Mr. John, on the prior panel, had made some observations with respect to the application of the Internal Revenue Code to the operations of tribal gambling within Indian country. That's one-half of the equation, of course. I would submit that the states, as well, have concerns over taxation.

Now, lest anyone jump on me for suggesting that states are talking—at least Arizona—is talking about taxing tribal gambling operations let me assure you that's not the case. If Congress were to grant the authority to the States to do that, that would be one thing. But the case law is relatively clear, a lot of it from Arizona, that the direct application of State taxes to tribal Indians and tribal governments is verboten.

But the point that I try to raise in this segment relates not to State taxation of tribal individuals, but rather the applicability of State taxes to non-Indian players. In point of fact, I think few people would dispute the contention that 90, 95, or 99 percent of the gambling operations exist simply because they are located in proximity to large populations of non-Indians, or at least nontribal members, who venture into Indian country to participate in gambling activities that are not permitted, or that are permitted with much more severe restrictions, beyond Indian country.

The situation in Arizona, again for illustrative purposes only, there were situations where—and it was bingo operations, footnote by the way—in Arizona, the bingo operations are ongoing. Arizona has taken no steps to shut down or stop or do anything else with respect to the bingo operations. We're not a Public Law 280 State, but we recognized the Pendency of the *Cabazon* decision and the *Barona* decision, so prudence would dictate that we sat back and watch what happened—well, now *Cabazon* has been decided.

But, the point is: with respect to the application of income taxes, there were situations where the tribal gambling operations were very reluctant to discuss with the Arizona Department of Revenue, for example, the winnings in these giant jackpots that were won by non-Indian players. Now, Supreme Court law—at least at the present time—seems to suggest that with respect to non-Indian activities on Indian reservations there's much more latitude with respect to the State exertion of jurisdiction over those activities unless there has been a Federal preemption or unless there is an interference with tribal sovereignty, an infringement upon tribal sovereignty.

I would submit that—without opening Pandora's box—that the committee, and indeed the Congress, examine this issue because I, thus far, have not heard a lot of discussion about the application of State taxes to non-Indian winners of jackpots. I would submit if a non-Indian who lives in Phoenix ventures onto an Indian reservation and wins a $100,000 jackpot and then goes back to Phoenix and lives in his house and has all the State services, the player ought to be subjected to the State income tax, and I would submit that that is probably the case throughout the United States.

[Prepared statements of Mr. Macpherson and Attorney General McKay appears in the appendix.]

The CHAIRMAN. Isn't he required at the present time?

Mr. MACPHERSON. I beg your pardon?

The CHAIRMAN. If an Arizonan went into a reservation and got a $100,000 jackpot and goes back to his home in Tucson, isn't he required to pay taxes?

Mr. MACPHERSON. Mr. Chairman, that would be our position.

The CHAIRMAN. Isn't he paying taxes now?

Mr. MACPHERSON. We have had situations, Mr. Chairman, where we don't know who the individual is who wins the jackpot. Under Federal law there are reporting requirements when large jackpots—Las Vegas jackpots—are won, and so the Internal Revenue Service knows. But in instances where we tried to get information about who the people were who won the jackpots, we were told "That's none of your business."

The CHAIRMAN. But if you knew, then that person is liable for the tax.

Mr. MACPHERSON. Mr. Chairman, that is our position. Now, that's not to say that there wouldn't be litigation over it; but the point is: we can go on for years and years with litigation. There are plenty of issues and plenty of lawyers to go around to litigate cases. I would submit that one of the major purposes of this committee and the Congress ought to be to fashion statutes and solutions to problems to head the litigation off at the pass.

The **Chairman**. The form of your discussion on the *Cabazon*—is jai alai legal in your State?

Mr. **Macpherson**. Mr. Chairman, parimutuel jai alai is a prohibited activity. That is our position. That's the position we have taken in the case with our Attorney General opinions on it, and that's the position.

The **Chairman**. Parimutuel jai alai is permitted?

Mr. **Macpherson**. Parimutuel jai alai is prohibited.

The **Chairman**. Prohibited?

Mr. **Macpherson**. Jai alai is fine. No problem. Caribbean racquetball. Parimutuel wagering on any activity, sporting event, the contingent future event, or occurrence of something, is a prohibited activity—it is a matter of criminal law. Now, having said that, Arizona does permit and regulate, under stringent guidelines, parimutuel horse racing and parimutuel dog racing; but in Arizona the position—at least that Attorney General Corbin has taken, and that we think is supported by the case law—is that parimutuel jai alai is a prohibited activity.

Senator **Evans**. Well, now let me go further. You say—that's a very interesting statement that the Attorney General "takes the position that"—you don't have to be an Attorney General to read the law. Does the law specifically and explicitely state that you can't have parimutuel betting on jai alai, or is he taking that position because the law does not explictely allow it.

Mr. **Macpherson**. Mr. Chairman and Senator Evans, there are no case law decisions in Arizona specifically saying one way or the other. There are two Attorney General opinions that specifically say parimutuel jai alai would violate the criminal law of the State of Arizona. That is one of the issues that's being litigated.

Senator **Evans**. Well, Attorney General's opinions and a quarter will get you a cup of coffee in terms of their—I was Governor for 12 years and I had to live with those—occasionally, sometimes I didn't. But I guess I get more—I still, I guess, don't have a real answer to the question. You say that it's an Attorney General's opinion. Is there any place in Arizona law where it's specifically in the law where you can pick up a book and read it which says parimutuel betting on jai alai games is illegal and prohibited in the State of Arizona.

Mr. **Macpherson**. Mr. Chairman and Senator Evans, the law states in section 13-3307, which is being renumbered to 3305, it says that parimutuel wagering, pool betting, on any sporting event—now, if we can characterize jai alai as a sporting event, then the answer is yes.

Senator **Evans**. OK. So that's what it does say.

Mr. **Macpherson**. That's correct.

There have been several comments from members of the prior panels trying to identify precisely what we are talking about here today, or what we should be talking about. I would submit on behalf of the National Attorneys General Association, as well as Attorney General Corbin, and I would hope Attorney General

McKay as well, that indeed we are talking not only about gaming and tribal sovereignty, we are talking about some very substantial issues involving State sovereignty.

I would submit that one of the major objectives of the Congress should be to recognize—and I'm not suggesting that they don't—but there needs to be a sensitity to the legitimate concerns of the States with respect to exertions of State sovereignty, particularly in situations such as I have described that are somewhat confused or fuzzy at this point in time; for example, the question of taxes.

Again, I want to emphasize: it is not the State of Arizona's position that a tribal gambling enterprise, under current law, would be subjected to State taxation. But it is my position that the issue of gambling winnings—with jackpots as high as who knows how high—if they are won by a non-Indian who has no ties to the reservation other than the fact that he or she is attending a gambling operation, there's not intellectual basis, in my view, for concluding that that individual ought to be exempted from State tax, because if you indulge in that assumption, perforce what you are arguing is the same argument, in my view, that was advanced in the *Colville* case, and which was rejected in the *Cabazon* case. What we are talking about here is marketing a tax exemption. If we are marketing a tax exemption then my argument would be that the *Colville* decision should guide the analysis.

Now, there will be a lot of opposition to that statement, I'm sure. But there's a dichotomy here that has not yet been sufficiently addressed, in my view, and I would urge Congress and the committee to take that into account.

With respect to the specific bills, rather than favor one or disfavor another one, I think I would simply like to point out that, as everyone in this room knows, this situation has been going on for years and years. There have been numerous bills. There have been any number of problems.

Now that the *Cabazon* decision has come down and now that there appears to be a lot of factual information developed, not only with respect to these bills but with respect to the prior bills, I think the Congress is in an ideal position to begin fashioning something that will take into recognition all of these concerns. Not only the concerns that I advocate on behalf of the States and the National Association of Attorneys General, but the legitimate aspirations of the tribes as well.

The question is: How do we balance the interests of all of these entities? That's a difficult proposition, and a difficult task. I'd like to assure Mr. Chairman and the members of the committee that as far as the State of Arizona is concerned and Attorney General Corbin is concerned, he will be very happy, as will I, to assist in any way that would seem appropriate. But I would also point out, in closing, that reasonable minds can differ on these issues. I think it would be counterproductive if, for example, a decision were made to convert the States or the tribes into winners with the other one being the loser. The trick here is to try and fashion something where some people have said a true compromise is where nobody is really happy with it.

The CHAIRMAN. Thank you very much.

Sheriff Duffy.

STATEMENT OF JOHN DUFFY, SHERIFF, SAN DIEGO COUNTY, SAN DIEGO, CA, FOR THE AMERICAN SHERIFF'S ASSOCIATION

Mr. DUFFY. Thank you, Mr. Chairman. My name is John F. Duffy. I'm the sheriff of San Diego County, CA, and I'm also a member of the board of directors of the National Sheriff's Association, and the chairman of the law and legislative committee for that organization.

I appreciate the opportunity to provide some input to this discussion in the regulation of gambling on Indian lands in 50 States involving probably 500 tribes and different treaties with all of those tribes. I realize it's a very complex situation, and we're happy to have some opportunity to put some input into something that we hope will come out of this.

First of all, I'd like to, if I can, show you a map of San Diego County which describes my other hat here. As the Sheriff of San Diego County I am also here representing 2.2 million residents, both Indian and non-Indian. We have 20 reservations located in San Diego County. They're outlined on the map here. The blue lines represent major interstate highways and large population areas here and here in proximity of the reservations of San Diego County. This is what this map is designed to show you.

The citizens of San Diego County expect—and I think should reasonably expect—that laws are applied equally throughout San Diego County. That's always been their expectation, since 1953 when Public Law 280 was passed, that what is applicable here in this area as far as playing bingo or any sort of gambling, is also applicable here and here and here.

The red lines here indicate Indian reservations that have already adopted tribal ordinances regulating bingo, and we have bingo operating on most of those reservations now.

This is not, I'm sure you already know, just a Federal issue to determine because of the stewardship of the Federal Government over Indian lands in this country. There is an enormous impact on the Indian and non-Indian alike. In San Diego County, and I'm sure the rest of the country as well, there is an enormous burden placed on the sheriff of the various 3,100 counties, many of whom have reservations. Almost always the reservations are located within the sheriff's law enforcement service area.

I think it's important that we make a distinction in Public Law 280 States. There are six States, as you know, where laws have changed. Unlike the State of Arizona, which you just heard about, in California the sheriff, since 1953—which happens to be the same year that I became a deputy sheriff in San Diego County—since 1953 the laws have been applied equally throughout San Diego County, including all gambling laws.

There was—I think it's worthy of mention here—in San Diego, among the Mission Indians, a game of pinon, which as been a traditional ceremonial game for many, many years. Even though technically that was a violation of California statues it was never enforced. I've never heard of any arrests being made for violation of law with respect to ceremonial gambling.

So from 1953 that's the way it's been. Everything has been done the same throughout San Diego County. Then here's where it starts: in 1973 I was appointed by then Attorney General of California, Evelle Younger, to serve on a Blue Ribbon Task Force on Gambling Legislation, to examine from a law enforcement and public safety perspective, without getting into the moral issues of gambling, a number of proposals that were then pending before the State legislature on the extension of legalized gambling beyond what already existed in the State.

We looked at a number of proposals, but one of those was to legalize bingo which was then illegal in California. In looking at the experiences in other States where bingo had been legalized, we concluded that if bingo was very, very carefully regulated and permitted for charitable and nonprofit purposes only, and no outside operators were permitted, and the jackpot sizes were regulated, then that posed no particular law enforcement threat, no threat to the public safety. We reported that to the State legislature.

As a matter of fact, bingo was going on anyway in most States, particularly in some of the churches where it was used not ony as a social event, but also a means of raising modest sums of money for the needs of churches or some charitable organization. Subsequently, that was enacted into law. Bingo then became regulated in the State of California under very narrow drawn guidelines. I would like to emphasize that at that point all of the Indian tribes in California were eligible to apply for permits and play bingo the same as the Catholic Church, the same as the Kiwanas Club, the same as a mobil homeowners association or anyone else who wanted to play bingo for those kinds of purposes within those guidelines. None did to my knowledge.

In 1983 an attorney from Los Angeles, by the name of Harrison Hertzberg, approached my office with the proposal that the Bureau of Indian Affairs, or the Department of the Interior, had a presidential position paper that encouraged Indians to improve their lot by getting involved in private enterprises and so on, and wanted to know our position if they violated the State law in conducting gambling differently with higher jackpots and without hours of regulation and using a management company to operate it, which would have been prohibited under State law. He was advised that we would enforce the law. Of course, that resulted in what's called a friendly lawsuit test case in the Federal court. We prevailed at the district court and the State statute was held to be criminal prohibitary. That was appealed to the 9th Circuit which ultimately reversed that, calling the State law civil regulatory, and that became the *Barona* v. *Duffy* case that opened up—I'm the Duffy in that case—opened up Indian gambling statewide in California without regulation, and that has been a problem ever since.

I'd just like now to point out that what it did was take a legal loophole in Public Law 280. California, like five other States, was given very broad responsibility and authority in the area of criminal law enforcement under Public Law 280. The State was given much more limited authority in the area of civil law enforcement. The distinction has become somewhat hazy, and that is the legal loophole that has allowed unregulated bingo on Indian lands in San Diego County and California and other Public Law 280 States.

Now, with respect to the reservations I mentioned earlier, I'd like to just run down three of them. The first one was the Barona

Reservation in which the American Management and Amusement Company had a 15-year contract with the Indians. They engaged in wholesale skimming, cheating the Indians, cheating the players, probably cheating anyone who might have invested in that company, by using shills who received the prize money, then met in secret with the management company representatives and turned the money over to them. As a result of complaints, investigation by my office and not by any Federal agency, resulted in us serving grand jury subpoenas and search warrants in Atlantic City, NJ, and Las Vegas, NV, in Los Angeles, in San Diego, and we seized all of the records of that management company and they are currently out of business. The result was convictions of the general manager and a number of other people who were involved in the conspiracy to cheat the Indians as well as cheat the players.

Sycuan Reservation had another management company called the Pan American Games, or some similar term, who under the guise of bingo, played casino games. If I can I'd like to ask someone to just hand this to you—there are some photographs in this book that will show you, I think graphically what we're talking about. We're not talking about a little church basement somewhere where people play bingo. We're talking about a major casino operation where casino gambling takes place. The pictures in there of the Indian housing will also show you the dilapidated conditions of the Indian reservations themselves as they have not profited from bingo.

On the Barona Reservation that I just mentioned to you, one general manager told me personally that they estimated their gross income at $1 a month over a 2½ year period before they were closed down. That's $35 million, at least, and some of the Indian houses still do not have running water. No visible improvements have been made to the Indian reservation.

With respect to the Sycuan Reservation, which I think is in the back of that book, Mr. Chairman, you'll see what are obviously blackjack tables. The management company not only manufactured those and had those patented, but as a matter of fact, introduced them to the Sycuan Indian Reservation under the title of "bingo jack" whereby the players would have to get numbers up to 121 without going over the number of 121. My deputies one night raided that facility, confiscated all of the gambling equipment and ultimately in State Court litigated the definition of bingo and were successful in getting a conviction under State gambling laws and destroying most of the gambling paraphernalia.

My point is that bingo, under the unregulated conditions, has become, in fact, a casino game.

The Rincon Reservation in San Diego County has been one where the Indians lost a great deal of money when the management company just simply left claiming they weren't making any money. We still believe the company made a lot of money. The investments of the Indians were lost. They were without a management company for a while, ultimately get another management company who then engaged in illegal card games that are clearly prohibited under California State law. My deputies then raided that bingo operation under State law, because of the illegal card games. That illustrates, I think that unless someone's right there at the local level watching these management companies regulating their conduct and what they do, they're going to go beyond what the statutes say or what the court says they're allowed to do.

There's one more thing here I'd like to ask someone to give to you, and that is architect's renderings and some maps provided to me by a Texas-based corporation which already has an agreement on the Viejas Indian Reservation in my county. If that's not a Las Vegas style casino, I'll put in with you. That is clearly a huge casino designed for bingo casino gambling and card room casino gambling right next to an interstate highway east of San Diego.

Now, as has been mentioned earlier, in February 1987 the Supreme Court decided the *Cabazon* case. The legal opinion rendered by both sides, the dissenting view as well as the majority opinion found that this hazy area between civil regulatory and criminal prohibitive is not a clear distinction. Both sides say that. They also say that Congress can correct that and should correct that. That is what I urge you to do.

The other thing that both sides really agree on—well, let me get into that later. First of all, the National Sheriff's Association feels that Congress must act this year and not allow the unregulated gambling to continue. We have to have some kind of statute. We want to work with the Congress in getting something that addresses everyone's interests.

We see three options: first of all, one that's not going to be very popular with this committee, probably, and perhaps not with some of the people that have spoken here before me, and that is for Congress, to delegate to the States the regulation of all gambling on Indian land, except Indian ceremonial gambling. The U.S. Supreme Court says you can do that, and you can do that if you want to do that. That, of course, would be the equal application of law that the citizens of San Diego County expect and they did experience until the *Barona* v. *Duffy* case in the 9th Circuit Court of Appeals changed that.

The second option would be to allow the States—and I think this is worthy of very serious consideration—allow the States to license and to regulate the management companies whether they're operating on Indian reservations or off reservations this is because I think ultimately we are going to see an extension of bingo off the reservation. If it is allowed on Indian reservations with giant jackpots and outside operators, ultimately the competitive pressure will cause it to be allowed at other places, just to give a fair advantage so that of the players, instead of all going to the reservation to gamble, they'll be able to go to the Catholic Church and the Kiwanas Club and gamble under the same conditions.

It's my opinion that a Federal Commission as proposed in the legislation before you is incapable of regulating from gambling conducted for 500 Indian tribes in 50 different States from Washington, DC. It's best done at the local level when these sharp operations are involved. There has been no evidence that we've ever come across that would indicate that where Indian bingo, has been run by the tribes without a management company, that any law enforcement problem resulted.

To the contrary, every single time we have encountered, it's been profiteering management companies who have taken advantage of this loophole in the law—this enclave or this exemption from regular law enforcement, the gambling without regulation who have cheated the Indian tribes, have cheated the players and the investors as well. There is ample evidence of organized crime infiltration of some of these companies. I heard this brought out before my testimony here. I know that it was talked about last year when I testified, and I think my written testimony is before you as well.

There is a third option, but I don't know how acceptable it really is. That is to conform the Federal law to the State law with respect to size of the jackpot, the hours of operation, prohibition of management companies and all of that, and regulate that arrangement with a Federal commission here in Washington. I think that it is probably feasible that you could regulate that kind of thing with a Federal commission here in Washington with some help at the local level.

At any rate, the National Sheriff's Association wants to work with this committee and with Congress to strike some sort of compromise that would benefit our Indian constituents and our non-Indian constituents as well and to protect the Indians rights, to protect the players, and to protect the investors.

That concludes my testimony, Mr. Chairman, and I'd be happy to answer any questions.

[The prepared statement of Mr. Duffy appears in the appendix.]

The Chairman. Thank you very much, Sheriff.

In the cases that you've cited of criminal activity, were the culprits men and women with organized crime ties?

Mr. Duffy. Yes; in one case, yes.

The Chairman. What about the others?

Mr. Duffy. None that we could establish. Organized crime connections and organized crime involvement is not against the law. While one can establish through link analysis charts, that's the way its usually done, that operators of an enterprise of any kind—a business or whatever it may be—can be actually linked through association and through surveillance—and that is what a link analysis chart is; actual surveillance or documentation links one to the other, and that's called organized crime association, and that has been clear in a number of management companies but it is not illegal to associate.

The Chairman. I gather from your testimony, Sheriff, that in San Diego County bingo is legal.

Mr. Duffy. Bingo is—yes, sir, it is under certain conditions. It is allowed to be played by charities, a charity recognized by the State of California, or a non-profit organization, and for charitable or nonprofit purposes only. No companies can be used to manage bingo. The permit is obtained from the local Sheriff's office who invesigates the charity that it is, in fact, a charity. We are also charged with responsibility of enforcing our State law on bingo. Up until *Barona* v. *Duffy* that included Indian lands.

We have had, as I might tell you, off-reservation—a company which was called Industries for the Blind, posing as a charity and it was not a charity and it skinned" a lot of people. We conducted a long-term investigation which resulted in arrests and prosecution of those individuals.

So bingo is legal in San Diego County, but only for very specific purposes and under very, very tight regulations. The purpose of that, from the very beginning, from the blue ribbon task force recommendation on bingo to the State legislature, was to keep organized crime and criminal enterprises and criminal elements out of the operation and allow it to be a social event and allow it to raise funds for recognized charitable purposes.

The CHAIRMAN. Do you have any knowledge of the *Santa Ana* case?

Mr. MACPHERSON. Mr. Chairman, I do. I have a copy of the case. I haven't had a chance to read it yet, but I'm generally familiar with it.

The CHAIRMAN. Under the case, were they permitted to gamble in violation of New Mexico laws?

Mr. MACPHERSON. Are we talking about the same Santa Ana case—the one that just came down: *Santa Ana* v. *Hodel*?

The CHAIRMAN. Yes.

Mr. MACPHERSON. No; the decision basically, as I understand it—again, it's in here—held that the action of the Secretary of Interior in disapproving the proposal—either the ordinance and/or the licensing arrangement—by the Santa Ana Pueblo was proper because although New Mexico permits and regulates parimutuel horse racing, it does not permit or regulate, and indeed prohibits, parimutuel dog racing, and therefore the action was proper. That's a very shorthand way of describing my understanding of the decision.

The CHAIRMAN. So the implication is that the tribe can carry on horse racing?

Mr. MACPHERSON. People could arrive at that conclusion, Mr. Chairman. Yes.

The CHAIRMAN. I see.

Senator Evans.

Senator EVANS. Thank you, Mr. Chairman. Let me start with Mr. Macpherson along the same lines, because I was struck by your statement which quoted the footnote on the court opinion. On page 4 where you say that the opinion specifically recognized that those activities which a State has determined to be prohibitive within its borders, even though there may be limited exceptions to a general prohibition should not be disregarded in favor of acquiescence to such otherwise prohibited activities within Indian country within such States.

As the chairman just pointed out, if specifically a State, whether New Mexico, Arizona, or any other, prohibits pari-mutual betting on jai alai but specifically allows it for horse and dog races, then I guess that that presumption is that it's OK, that under those conditions Indian tribes could presumably enter into horse and dog racing?

Mr. MACPHERSON. Mr. Chairman, Senator Evans, that argument can be made. I don't think that the court actually addressed that. The purpose of the prepared statement was to point out, or at least to attempt to point out——

Senator EVANS. On behalf of your Attorney General how would you argue it?

Mr. MACPHERSON. Mr. Chairman, Mr. Evans, I would argue that under footnote 10, parimutuel jai alai, if attempted to be conducted in Arizona, would be subject to State prosecution because it is a prohibited criminal activity with severe class IV or V felony prohibitions.

Senator EVANS. But how about if they, instead, chose to open a horse track?

Mr. MACPHERSON. Mr. Chairman, Senator Evans, if they chose to open a horse track with parimutuel wagering under the current State of the law, even though the *Cabazon* decision did not directly address what the bills characterize as class III gambling, I suspect that there may be a very strong argument that they could go ahead and do that.

Senator EVANS. The question was in the nature of the previous question: how would you argue it to your Attorney General and advise the State to argue it.

Mr. MACPHERSON. Mr. Chairman, Senator Evans, I would probably argue to Mr. Corbin that given the current state of the law, that is if there were no Federal legislation, that the *Cabazon* decision would probably control, could very well result, and if we tried to litigate the case, we could lose. In point of fact, one of the dynamics of the bingo situation in Arizona was that we knew of the pendency of the *Barona* case, as well as the *Cabazon* case, and instead of going out and trying to shut down the games we simply waited to see what would happen.

Senator EVANS. Under this limited exceptions idea that—trying to create the distinction between the civil regulatory and the criminal prohibitory—you wouldn't suggest to the State they they merely state or change the law. So that pari-mutuel betting is criminal and prohibitory in all of its aspects except where it is conducted at X dog race track and Y horse race track?

Mr. MACPHERSON. Mr. Chairman and Senator Evans, we don't believe that was one of the issues that came up in the jai alai case and we decided we didn't need that. We don't think that that's necessary. I would point out——

Senator EVANS. Don't you think it might be necessary if there suddenly were a whole lot of proposed horse racetracks or dog racetracks being suggested on Indian reservations?

Mr. MACPHERSON. Mr. Chairman, Senator Evans, that might be the case. But what I would point out, and again this is something that really hasn't been discussed at length, although it has been touched upon: if a State decides that it wants to prohibit bingo, it can put Indian bingo out of business.

Senator EVANS. Yes.

Mr. MACPHERSON. Because if it's prohibited throughout the State it cannot be conducted within Indian Country. Furthermore, as Sheriff Duffy has pointed out, if the State response is to say, "All right. Fine. No restrictions on bingo: unlimited jackpots, 24 hours a day," that, too, has the tendency to put Indian bingo out of business because then the attractiveness, the incentive, to go 5, 6, 8, 10, 20, or 100 miles—indeed, some of the games draw players from Canada—evaporates. So the States can do things that could be inimical to tribal gambling. I mean, I don't know if that is actually—I'm not suggesting that. I am pointing out that these are situations that haven't really been addressed in detail in the bills and that the Congress and the committee, in my view, ought to take into consideration.

Senator EVANS. Well, I don't quite know how you can take it into consideration other than prohibiting a State from eliminating bingo, which I think would be an egregious step toward involving ourselves in State activity. States are perfectly free to do all of those things you have said; however, a State that has adopted by legislative action bingo under pressure from the various charitable organizations and others I suspect would find it precious difficult to go back in and get a legislature to prohibit that.

Mr. MACPHERSON. Mr. Chairman——

Senator EVANS. You'd be marched on by all the churches and Rotary Clubs and everybody else in the State.

Senator EVANS. Mr. Chairman, Senator Evans, I'm not suggesting otherwise. I mean I'm talking sort of as an intellectual exercise here.

Senator EVANS. But if I may—I think that it has been useful for the record because I think that it is clear under the law that if a State sees what they believe to be a real concern and if, in fact, the law, as in the *Cabazon* case, can distinguish between regulatory and prohibitory activities. Then as a result so much evil is attached to what a State sees in front of it and presumably does have the right to say these activities are prohibited whether conducted on an Indian reservation or off an Indian reservation.

Mr. MACPHERSON. Mr. Chairman, Senator Evans, that's quite correct. In my view, at least, that constitutes a recognition of the importance of State sovereignty issues. State sovereignty is, in our view, in my view, a legitimate topic for discussion here in addition to the tribal sovereignty issues. I don't deny that tribal sovereignty is one of the issues that needs to be considered. For example, one of the prior witnesses discussed the fact that the tribal monitoring process was sufficient enough to catch several people that were skimming or doing other illegal activities with respect to the gambling activity.

Another issue that is in the Pandora's box that we're not going to open is: if those individuals are non-Indians, tribal courts lack the jurisdiction to prosecute those individuals because of the *Oliphant* decision, so they have to rely either on the States, which is fine, or the Federal Government. But if the States or the Federal Government don't want to prosecute—I mean, there's a lot of prosecutoral discretion involved—the individual doesn't get prosecuted because there's no jurisdiction unless the Congress acts to undo or modify the *Oliphant* decision.

Senator EVANS. Well, it might be a good thing to change that. I mean, if Indian reservations do have—you know, there is a question of State sovereignty, correct. There is also a question of tribal sovereignty. We maintain an unusual relationship with tribal reservations, with the states and with the rest of the citizenry, which we created. Prior to the reservations, and going some years prior to that, we didn't own the land. The Indian tribes had never claimed to own the land. They didn't believe—it's my understanding, at least—from their traditions, that they don't believe anyone really has ownership, it's trusteeship more than ownership. We changed that when we expropriated Indian territory and created the reservations. We signed the treaties which created sort of a dual sovereignty, I guess, and I think we've got to live with it.

So it isn't just a question of State sovereignty and, you know, the whole idea that all citizens live up to the same laws. There are some very special circumstances here which we've got to work our way around.

Let me turn to the question of taxes paid to the State of Arizona. I don't think there's any question at all—and I'd be willing to bet—the court would clearly say—I shouldn't use that—I would be willing to. [Laughter.]

Well, I'll be willing to bet, we'll stipulate that for the record, that any court would require a non-Indian citizen who had won money on an Indian Reservation that such money would be subject to taxes.

Mr. MACPHERSON. Mr. Chairman, Senator Evans, I'd be willing to bet that as well. The issue, however, is not whether or not a court would ultimately come to that kind of a decision. I agree, I think that they would. The issue is one of audit.

Senator EVANS. Ah, yes.

Mr. MACPHERSON. One of the problems—at least one of the attributes of sovereignty, at least in Arizona, is the power to exclude non-Indians from Indian Country.

Now, if a Department of Revenue agent wants to go to a tribal bingo game to monitor those non-Indians who win the $50,000, the $100,000 jackpots, and the DOR agent is identified and asked politely to exit, he can't stick around. Now, that is unique to Indian Country. I mean, if an auditor is to monitor at a pari-mutuel horse racing track who the winners are—as the Internal Revenue Service does, and as they do at casinos—that's fine. But the point is: if the tribal authorities are unwilling to identify who these people are, then we are left with the good conscience of the million dollar winner to voluntarily report his or her winnings to the State; and with due respect sometimes that reliance is unfounded.

Senator EVANS. Wouldn't you say that this is the great American contest—whether on Indian reservations or outside Indian reservations—to protect as much of your income as you can and pay as little in the way of taxes that you can, legitimately, of course.

Mr. MACPHERSON. Mr. Chairman, Senator Evans, I would.

Senator EVANS. And there are a good many cases where people are not required, or they're not required at the time of acquiring income to report that to any taxing agency, where Federal or State, except voluntarily.

Mr. MACPHERSON. Mr. Chairman, Senator Evans, that's quite correct. This country—I don't want to get into a tax debate here, but it relies very heavily on voluntary compliance. The reason it works is because it's backed up with enforcement mechanisms. Those enforcement mechanisms, as far as the States are concerned, are absent within Indian Country.

Senator EVANS. Yes; I would suggest that for all practical purposes they're absent outside Indian Country, too. How many tax agents do you have spending several nights at an expensive restaurant just observing the waiter or waitress to see how much they're taking in terms of tips so that you can audit them or assert that they're making more money than they're reporting on their income tax form?

Mr. MACPHERSON. Mr. Chairman, Senator Evans, I would submit that there are probably—I don't know the exact number, but there are probably very few. At the same time, the people who get tips probably don't get $50,000 jackpots either, and that's the concern.

Senator EVANS. So you just want to get the biggies.

Mr. MACPHERSON. We want to get everybody. We want to make sure that everyone who owes their legitimate tax laibility, and no more, pays it. And that is not the situation that we have right now.

Senator EVANS. In your State do you have a State monopoly on liquor sales?

Mr. MACPHERSON. Mr. Chairman, by "monopoly"——

Senator EVANS. State——

Mr. MACPHERSON. State operated? No, we do not.

Senator EVANS. Well, in some other States they have State monopolies. In our own State of Washington they have a State monopoly and they have the tribal sales of liquor outside the State monopoly, and pretty good prices compared to the State monopoly. Presumably a non-Indian who buys liquor at that Indian store is not paying the taxes which are included in the price of the bottle of liquor that other citizens in the State store are paying, or the profits that would be derived. These individuals have to pay the taxes and these profits—are the larger share in our State's incidentally are more than the taxes. It's presumably legitimate to say that a non-Indian is illegally purchasing liquor from outside the State-run system or stores.

Mr. MACPHERSON. Mr. Chairman, Senator, I'm not sure if that's a question, but I'm assuming that there are no other illegalities involved, that is, that the liquor vendor is a licensed Indian trader and there's compliance with the *Rice* v. *Renner* decision and all that.

Senator EVANS. And they've got the little liquor stamps on them and all that. The State is not going after them. Do you suggest that it would be appropriate in order to audit and make sure everybody pays their taxes and all the fees that go to the states to park a patrol car at the entrance to the liquor store and audit each of the existing non-Indian purchasers.

Mr. MACPHERSON. Mr. Chairman, Senator, no. I'm not suggesting that.

Senator EVANS. So you just suggesting the biggies ought to get it.

Mr. MACPHERSON. Mr. Chairman, Senator Evans, no. I'm not suggesting that either. I'm suggesting that if we're prepared to open the Pandora's Box then we can discuss all of the specifics of the matter. It's simply a topic of discussion, I guess.

Senator EVANS. Sheriff Duffy?

Mr. DUFFY. Yes, sir.

Senator EVANS. Those are interesting photographs, and I don't think anyone suggests that its desirable for an extraordinary amount of money to come in from gambling and none of the benefits flow to the citizens of that particular community; however, I would suggest that you could take the very same set of pictures in Las Vegas as well as on an Indian reservation and find that there are extraordinary amounts of money coming in to the State of

Nevada from taxes on casinos and still slums and people who have no indoor facilities and all of the same things outside the Indian reservations. That's just not a problem on Indian reservations, that's a problem of our whole country, and I'm not sure that it's useful to ascribe that only to Indian reservations. It's easy enough to do, but I suggest it would be just as easy to do in Las Vegas or Atlantic City or almost any other place in the country where a whole lot of money comes in.

It's ultimately a decision of the State as to where it's spent and who benefits, just as I presume in terms of gambling on the Indian reservations a whole lot of money comes in. To the degree some of that money is shared by the tribe or the tribal council they'll have to make decisions as to how best to utilize that money. Isn't that, in both cases, an appropriate exercise of governmental authority?

Mr. DUFFY. Mr. Chairman and Senator Evans. No. I don't really see it that way. The stated purpose on why Indian tribes have to have a special advantage that's not enjoyed by every other citizen in San Diego County or in any other State where bingo's being played for charitable purposes is to improve the lot of the Indians on reservations, to provide jobs, to provide tangible physical improvements. My point is, that on that particular reservation, the Barona, where at least $1 million a month came in. According to the management company the Indians didn't get their 55 percent that was called for in the 15-year sweetheart contract with American Management and Amusement Co., and as it turned out ultimately, the Indian tribe was obviously being cheated by the management company.

I think you could make a case that there would be derelict-type housing and improvements needed in Las Vegas, but at least the gambling there is regulated, and regulated by the State with the intent to preclude cheating. It is, I'm told that gambling provides about 50 percent or more of the State's income as opposed to what some other States——

Senator EVANS. Do you see it the same way? Do you say there's any skimming going on in Las Vegas?

Mr. DUFFY. Of course I do. I think there is. I'm not enforcing the law in Las Vegas but I've read of cases and know of cases, and I certainly know of the organized crime connections with gambling in Las Vegas. One of the people convicted on the Barona Reservation skimming case had clear-cut cases of organized crime connections in Las Vegas. In fact, he became a cooperative witness in a double murder case in Las Vegas and a triple murder case with organized crime connections in Los Angeles.

Senator EVANS. Doesn't that suggest that maybe the answer is neither to ban gambling on Indian reservations or ban gambling in Las Vegas, but rather to try to ensure that there is good, close, accurate self-regulation, regulation by the Government who's in control—in this case the Indian tribes in one case and the government of the county or the State in Las Vegas on the other.

Mr. DUFFY. Mr. Chairman, Senator Evans, yes, I agree. That's what we're here for, I hope, to find some way to fairly, adequately regulate whatever form of gambling is going to take place. It just happens that the National Sheriffs believe that the closest to the problem is the best way to regulate it.

Senator Evans. When you're saying "the closest to the problem" being the State or the local community, isn't it even closer to have the tribal leadership? That's real close.

Mr. Duffy. Well, it may be, but they're helpless to enforce laws they may be in a position to know are being violated. I can tell you that on the Barona Reservation there is not a unanimous opinion that a bingo management company should be thorough. They had a recall election fail by three votes. And guess what happened after the recall election: the managing company gave $1,000 to every voting Indian to make sure that didn't come close to happening again. So I can tell you that the management companies are the evil that is involved with this, and unless they're regulated, either by you—and I don't think the Federal Government can do it through some Indian commission here in Washington composed of five people even with a staff—or as I think most effectively by the States, and that's what I mean by "close to the problem"—then you can expect more and more of that kind of criminal involvement.

Senator Evans. Do you think that ought to be a requirement or be an opportunity that Indians may choose to take to have the State help them in the regulation?

Mr. Duffy. I think either way it would work. The State could work with the Indian Tribal Council, but I think under the way the law is set up the issue is going to be—you know, what we talked about a minute ago sovereignty.

There is, of course, the issue of the sovereignty of the State of California, or any other State. I say "California" because I do think there's a distinction there because of Public Law 280. Sheriffs or local police enforce criminal law on the reservation in California and other Public Law 280 States. The issue of the sovereignty of the Tribal Council must be considered, and of course the issue of the sovereignty of the Federal Government—but within those somewhere we need to find some way to vigorously, strictly regulate management companies. Even with all the regulations and all of the restrictions on employment and all of the inspection methods in the State of Nevada, and indeed New Jersey, criminal elements still sometimes get into the operation. There's so much money flowing that you simply can't avoid the temptation to circumvent the law. I think in order to protect the Indians and protect the citizens who are going to be the non-Indian players and who are going to generate the money, and indeed protect investors who might want to invest in a management company, because we've had some experience that the investors themselves have been defrauded, we must regulate these companies.

Senator Evans. That's been very helpful. I guess I couldn't close without coming back to what I said earlier that if you take the winnings, or if you take the cost of operation—whatever profits a casino takes and all of the skimming at its maximum, you don't even come close to the kind of scam that State lotteries run, at least in terms of the player. Now they may say they're taking a lot of money for the good of the State, and of course they are. In terms of the player it's the bummest deal to ever invest in around by a considerable distance, even after you take all the skimming that goes on in private games out of it.

Mr. **Duffy**. Mr. Chairman, Senator Evans. Back when I served on the blue ribbon task force we did, in fact, examine many other forms besides bingo. We looked at State lotteries, we looked at off-track betting and all of the various forms of gambling, even those run by the State. They are extremely difficult to regulate, and the only one we felt, we had any hope at all of keeping organized crime and keeping criminal elements out of, was very carefully regulated bingo—I still think it should be done closer at the place where the gambling is occurring—bingo, which indeed is a social event and always was a social event until the advent of the Barona versus Duffy and the Seminoles versus Butterworth in Florida.

Senator **Evans**. Thank you, Mr. Chairman.

The **Chairman**. Mr. Macpherson, Sheriff Duffy, you've been extremely helpful to us. The only conclusion I can reach is that this must be a goldmine for lawyers. [Laughter.]

Mr. **Duffy**. That's right.

Mr. **Macpherson**. Mr. Chairman, I would characterize it as fool's gold actually.

The **Chairman**. This afternoon we will reconvene at 2 p.m. At that time we will hear from Mr. Stanley Hunterton, Mr. Jerome Skolnick, Mr. Donald Hill, and Mr. Philip Hannifan. Until then the committee will stand in recess.

[Recess.]

AFTERNOON SESSION

STATEMENT OF STANLEY HUNTERTON, ATTORNEY AT LAW, LAS VEGAS, NV, FORMER PROSECUTOR, U.S. DEPARTMENT OF JUSTICE, ORGANIZED CRIME STRIKE FORCE

Mr. **Hunterton**. Thank you, Mr. Chairman.

Due to the failure of the recording equipment, I will repeat my brief introductory remark that during most of the 10 years that I spent as an organized crime prosecutor with the Department of Justice I was in Las Vegas, and part of that period overlapped with the tenure of then Gaming Commission Chairman, now Senator Harry Reid, although our roles were different and at times there was tension during that period between Federal investigators and State regulators, I wanted to say at the outset that listening to Senator Reid this morning I had a great deal of empathy with the passion with which he spoke about this subject.

The process of gaming regulation and the process of rooting out the corrupting influences that are associated with legalized casino gaming are every bit as difficult professionally and emotionally as Senator Reid conveyed in his remarks this morning.

Rather than go over the ground that's been covered this morning, and I think all of the prior witnesses have done an admirable job in stating what the issues are, I'd like to direct my remarks to what I think the issues before this committee may have narrowed down to.

It is quite clear that there is no regulatory system which is perfect, one run by the Indians themselves, one run by State regulators, one run by a new Federal commission of some kind, or any combination of these. They will all be administered by people. These people will have human failures, and with the monetary stakes at issue in casino gambling there will always be efforts to steal the money. So none of these systems will work perfectly, and we should begin with that presumption.

We should also begin by honestly admitting that to the extent any of these regulatory systems break down, to the extent there is any leakage or inadequacy in any of these systems, there will be one winner, that is the people who are corrupting the business; and there will be at least three losers—the tribe will lose, the betting public will lose because they're not getting a fair shot at winning, and speaking on behalf of the State I've chosen to live in, Nevada, our primary industry will lose even if the corruption of the gaming process takes place in Oklahoma or New York or somewhere else because gaming has been called a pariah industry. The respectability of gaming is hard won and easily lost, and it is constantly important to convince the public, and make it a fact, that the games and the operation are run honestly and above board. Even the smallest scandal has ripple effects throughout the industry.

As I listened this morning it seemed clear to me that there are two issues: the first is who is going to do this regulation, and I'd say that I'm addressing my remarks only to full-blown casino gambling, including all the traditional table games, slot machines, and sports books—the classic Las Vegas casino. I think since that's the area in which I spent my time in law enforcement, I can be more helpful to the committee if I address that rather than looking at times like bingo.

So, in the context of full-blown casino gambling: who should do the regulating? And the second thing that I think I can be helpful to the committee on is to make some remarks about what is this phenomenon of organized crime's attraction to casino gambling, and what is a real accurate threat assessment of organized crime with respect to casino gaming wherever it may be oprated, be it Nevada, New Jersey, military reservations, or Indian reservations.

In answer to the question who should do the regulating it's been suggested that because the States have had an imperfect record and there have been scandals whether organized crime-related or not, in Nevada, the Pennsylvania Lottery, and other places that because the States haven't done a perfect job, that either we ought to move up a level with the Federal Indian Gaming Commission, or down a level to tribal regulation.

I'll address first the idea of a Federal Indian Gaming Commission which would have control over full-blown casino gambling. It may seem strange for someone who spent 11 years—and until I started the private practice of law—all of my post-law school career in the employ of the Federal Government through the Department of Justice—but I see no reason to believe, based on that 11 years of experience, that the Federal Govenment would do a better job than the states. In fact, based on my experience I believe that a newly-formed Federal Indian Gaming commission would have years and years of a breaking-in period before other Federal agencies, and indeed other State agencies on which this new agency would have to rely, would come to trust it, would come to deal with it, would share information freely with it. In short, it would be a new institution and it would go through all of the institutional growing pains.

There's also no reason to believe, based on our past experience—"ours" meaning the Federal Government—that we would necessarily have done better than the State. Now, with our crystal ball, not to mention extensive wire taps that the Federal Government engaged in during the late 1970's and early 1980's, it's now clear that the Federal Government played a leading role in routing out organized crime in Las Vegas, but it wasn't so clear to the Federal Government at the time, and I would cite as evidence of that fact that Las Vegas was the last city to have installed an organized crime strike force.

There had been a branch office of Los Angeles which had been manned by one or sometimes two people, but was not until I believe perhaps 1980 or 1981, after I'd been there a few years, that it was designated a full-blown strike force. So it was not just State government that perhaps came with too little too late to the problem of organized crime in casinos. The Federal Government was as little and as late, if not more so.

The only way that the Federal Indian Gaming Commission could be affective in doing the background checks, doing the regulatory work, and doing enforcement work when crimes were committed, would be if jurisdiction was vested with the FBI. I, of course, do not speak for the FBI, but I can't imagine that the Bureau would want to take jurisdiction over this, and I can't imagine that it would be an effective use of the Bureau's resources given other pressing problems that the Bureau is involved with.

Of course, the Bureau will speak for itself, but compared with the possibility of using existing State regulatory systems on a much more localized and modest scale, I don't think it would be a good use of the Bureaus' resources.

With respect to the tribes doing the regulation of full-blown casino gambling themselves—and I mean this with no disrespect at all—but it would be like a small unit of town government trying to run a large, essentially statewide, operation. The Chair has used the example of these small tribes, they would present a particular problem, lacking the resources to effectively do this sort of regulation, which is extremely complex and requires a lot of experience, on their own.

My fear is that in those situations the tail would wag the dog. The promoter of the casino would find the small tribe, would use the piece of land for his own interest to get the casino up, and that sort of situation requires careful regulation.

I'd like to close briefly with the question of the threat of organized crime to casino gaming on Indian reservations. I think it's important to approach this with a sense of perspective. It has never been true that there is a member of La Cosa Nostra behind every slot machine in Las Vegas. The public image of the domination of the mob of Las Vegas is overdone. It is simply not true.

On the other hand, it is a fact that organized crime has historically been drawn to casinos. It is a fact that since 1970 there have been approximately 20 Federal prosecutions in cities all over the country directly involving organized crime figures—approximately 75 of those figures—and that several Las Vegas' casinos have been implicated in this.

I was participant in some of these investigations. I have listened to the wire taps. I have debriefed the turned witnesses. I have questioned these people in the grand jury. The quintessential example was referred to by Senator Reid in his remarks this morning when he talked about the disorientation, if you will, that came about when everyone found out that one of Las Vegas' most respected gaming operators was indeed bought and paid for by the Mafia. The FBI was able to get a bug into the basement of the come in Kansas City and for approximately three hours listened to this very respected gaming operator conduct a seminar for the hierarchy of Kansas City's organized crime family on the various methods of skimming. The only good thing to be said about that, other than that he was found out, was that we, as the investigators, learned a great deal about how far they were still ahead of us in these methods.

I would also caution the committee to not think restrictively when using the phrase "organized crime." The Mafia, as we commonly refer to it, may or may not be interested in casino gambling on Indian reservations, depending on the area of the country what form of regulation comes out, and a lot of other factors. My guess is that, more or less, they will be interested, but I think we would miss the boat if we put blinders on and think of organized crime as that which we call the Mafia.

People are going to be needed to finance large-scale gaming operations if they take place on Indian reservations. People will be needed to have equity interests. Someone will need to own these—in partnership, perhaps, with the tribe if they work out an equity interest—and people will have to operate them. These groups are not necessarily going to be the Mafia, but if we begin to generate large dollar volumes with casino gaming in Indian reservations, the same attraction will be there for organized groups of criminals other than the Mafia. So the intelligence effort and the regulatory effort that will be necessary to conduct gaming on Indian reservations is going to have to cast a much wider net than just looking for members and associates of Mafia.

I thank the Chair.

The CHAIRMAN. Thank you very much.

[Prepared statement of Mr. Hunterton appears in the appendix.]

The CHAIRMAN. Professor Skolnick.

STATEMENT OF JEROME SKOLNICK, PROFESSOR OF LAW, UNIVERSITY OF CALIFORNIA, BERKELEY, CA

Mr. SKOLNICK. Thank you very much, Mr. Chairman, for allowing me to come here. My name is Jerome Skolnick. I am a professor of law in the Jurisprudence and Social Policy Program at the University of California, Berkeley. I am also a sociologist, and during the 1970's I did a 3-year study of the Nevada Gaming Control Board and a briefer study of the Gaming Control Board in Great Britain, and that's why I'm here today.

I've submitted written testimony, and I won't read the testimony to you.

I want to address myself to a couple of questions, after hearing Stan Hunterton's testimony, with which I agree entirely. Let me see if I can put it a little bit differently, though.

One question that you might want to raise is: why is regulation important in the gambling business? Why not treat it like any other business? Suppose you had a Macy's or Gimbals? You don't have to have special regulation for that.

Well, there are really two every important reasons. One reason is that there has been a history of organized crime interest in the gambling business, not just in Nevada but in other places as well. However, there has been a special interest by criminally inclined persons in casino gambling and associated forms. I would worry about bingo also, because all gambling interests seem to attract people who are more or less shady. That doesn't mean that those who operate casinos necessarily are shady, but rather that shady people are attracted by the gambling business.

The Nevada gaming industry was started by Benjamin Bugsy Segal, who was an organized crime figure. When I began my studies in the mid 1970's, the first problem that the Nevada Gaming Control Commission was wrestling with was: what do we do about the teamsters? Well, why the teamsters? Well, because the Teamsters Central State pension funds had a quarter of a billion dollars out in loans to various Nevada casinos.

Now, I think it was me who coined the term "pariah industry." Why did I call it a pariah industry? Because at that time, during the 1970's, conventional institutional lenders, like banks and insurance companies, were quite unwilling to lend money to casinos because of the organized crime associations of casinos. Now, it was up to the Nevada authorities to try and get rid of these organized crime interests, and they did with the help of the Federal Government.

When I say "got rid of them" that doesn't mean that there aren't any remaining. People ask me, "Is there organized crime in Nevada?" Well, some casinos are not organized crime infiltrated, some I'm not too sure about, and some probably are, I just don't know. Nevertheless, it's important to understand that casino financing is dependent upon an image and a reality of the industry not being dominated by organized crime figures. So that if you want to have an expansive industry and a healthy industry you've got to have an industry that is relatively clean of organized crime figures. So that's one very important reason for considering the gambling business different from other businesses.

A second reason is that the gambling business is an extremely difficult business to control. Let me read a little bit here from my testimony because I tried to write this out fairly carefully.

In other businesses you have inventories of goods that can be compared to the cash that's received, but in casinos you do not. For example, if you sell a pair of gloves at Macy's you have a sales slip, if IMB leases computers, then a contract is prepared, if a winery ships wine out of its warehouse you have a bill of lading, but in casinos, when a blackjack dealer pays off on a winning hand there is no record of that transaction; she simply pushes chips across the table.

So you have an essential control problem in casinos because there is always an absence of a paper record and, therefore, the kinds of things that independent auditors normally do in businesses you can't do in a casino. You can't perform test checks of sales slips or cash register tapes or leases and compare the results with the financial records.

Now, as a result of this, casinos rely on three other forms of control. One is the audit of play, a second is surveillance, and the third is licensing.

I have in my testimony a description of audit of play and I won't go over it because it is quite complicated. It's very difficult to control what goes on at casino tables through audit of play. It can be done, but you have to make a number of assumptions about what has been happening at the table during the 8-hour shift.

For example, you've got to know how much you started off with in chips, and then you're going to get play, and you're going to end up with an absence of chips you have handed over to customers. But in the meantime you've got a box that's going to have cash and credit and maybe checks. Let's say you have $50,000 in cash and credit and checks, at the end of the shift you've lost $20,000 in chips, you have a gross win or profit of $30,000.

You can make that calculation easily, but you have to satisfy all sorts of very important assumptions that the chips at the beginning of the shift were properly counted and recorded; that the amount of chips remaining at the day's end had either been exchanged for cash or checks or were actually paid; that all of the losing wagers had been properly collected, because every time somebody loses they have to pay chips; that all the cash and checks had properly exchanged by the dealer for gaming chips; that all the cash and checks collected by the dealer had remained at the table and had been delivered to the counting process—you're not sure that it's been delivered so you have to have controls over the delivery process; that casino employees or patrons hadn't misappropriated the chips so that, for example, you have to be sure that the blackjack dealer didn't deal favorably to an accomplice who won and therefore the chips were misappropriated; that the rules that are pertaining to how the game is to be played were followed, and there are very complex rules in craps, for example; that the equipment hadn't been tampered with so you don't have false dice or a loaded roulette wheel; that the equipment was used the way it's supposed to be used according to the rules; and also that any chips that were actually sent from the cashier's cage, had actually reached their destination, had been properly recorded, and if their destination was the counting room that there wasn't any theft in the counting.

So when a casino finally reports a gross profit or loss with the accompanying tax consequences, the accuracy of that report depends upon the continued integrity of all the assumptions that I've just outlined for you—I've just outlined 11, and could probably outline 20.

So there's no simple way to ensure that integrity, and the casino control, therefore, uses two other means to control: one is surveillance.

All casinos now have complex videotaping systems, they have people walking around in the ceilings of the casinos and the "eye of the sky," so called, on catwalks. Most importantly, they have casino executives called "pit bosses," who stand behind the dealers and observe what the dealers are doing. Now, these pit bosses are much more knowledgeable than I am. I learned a lot from them, but I learned a lot about all the different ways that people who are dealing can cheat. So you have to have very sophisticated observers in order to understand whether sophisticated cheating is going on.

Now, the cheaters in the casino business are incredible, and I describe in my testimony one scam which is a so-called blackjack shoe. A "shoe" is a box that looks like a shoebox, and it's put in so that dealers don't deal by hand, and the reason they put the shoe in rather than having the dealers deal by hand is because to my eye—and I believe without any disrespect to yours, sir—if you were to watch a skilled dealer deal and they were cheating you couldn't see it—I can't see it. The only people I've every known who can really see it are people who are skilled in this business. So they put this box in to prevent that and dealers were required to deal from the "shoe."

The problem is: this box was mechanically altered in a very sophisticated way so that through a prism a cheater on the outside could press a button and have a light come on and be able to see what the next card was going to be. The only reason this box was ever discovered was because it was a little bit heavier than the normal box. It had been slipped in, but the people at the Gaming Control Board at that time were confident that there were several other of these kinds of boxes.

The same is true with slot machines or any electronic game. The same is true of bingo. You will hear about slot machines from the next witness, whose testimony I've read, so I won't go into that.

Now, the third control measure, which is the lynchpin of control, is licensing. What is licensing? Licensing of the casino business is not like what we often think of as licensing. Most of our experience, or my experience, with licensing is: I took a test to get a drivers license, and I had to show that I could drive an automobile. That's a fairly easy test.

What does it mean to be licensed to be an equity owner or to run a casino or to be an employee of a casino? Well, what we're talking about now is licensing of character, because one of the problems with the casino business is that a lot of the people who know how to work the games are precisely the people that you don't want to have running them in the casino because of their bad character. Indeed, one of the problems of the industry through the years has been that when the industry began the only people who knew how to run these games in a sophisticated way were people who had run illegal games in other States. So you had this paradox of having people who were competent, but were not honest, and you had to depend upon those people.

Licensing, presumably, was the way of controlling for character. Now, the problem with licensing is that it's only been partly successful.

Have I overstayed my time?

The CHAIRMAN. Oh, no. Go on please.

Mr. **Skolnick**. The problem is that it's only been partly successful. Actually, as I said when I came in, there were these loans out from the teamsters. One of the recipients of these loans was man named Allen Glick, who was being investigated by the Nevada Gaming Control Board at the time. I followed that investigation very carefully—the Gaming authorities permitted me to really closely monitor these investigations—and I could find nothing wrong with the investigation. But Mr. Glick, who was an attorney and who was a former Army Captain who had served in Viet Nam and looked terrific, was later found to have been a front for organized crime. So this licensing business is very tough, and I would say that even with the best controls, then, it's been extremely difficult for states to eliminate entirely the influence of organized crime on casino gambling.

So the next question is the one that Mr. Hunterton raises, which is: who should do the regulating? Well, in my opinion none of the regulatory authorities that I have observed have been entirely successful; not Nevada, not New Jersey, not even England—in fact, England had to close down some casinos a couple of years ago.

I do think, however, that the states are best able today to do the regulating. It requires a tremendous amount of expertise. If you were to set up a Federal Gaming Commission you would need to expend, I would say, hundreds of millions of dollars to be able to work up to the kind of expertise that the states already have. So it's my feeling that if you are going to have class II gaming, or I would say even bingo—which although called class II gaming, when you have this 121 jackpot business you've really got class III gaming—I would say that for all of those the states are the best regulators, and I would go along with the notion of having the states continue to regulate because they have the best track record.

Now, I finally want to associate myself with Mr. Hunterton's other remarks because I want to underscore them. It's very important for the general public, for the betting public, and for the tribes themselves, if they are going to get into the gambling business, to have the tightest, most honest possible control and regulation, and so while we have to recognize that all regulation is going to be imperfect, we have to look toward those established bodies of regulators who have the best possible chance of regulating people who will constantly be attracted to casino gambling and associated forms and will try to undermine it.

Thank you very much.

The **Chairman**. Thank you very much, professor.

[Prepared statement of Mr. Skolnick appears in the appendix.]

The **Chairman**. Next witness, Mr. Hill.

STATEMENT OF DONALD HILL, ATTORNEY AT LAW, RENO, NV, FORMER ASSISTANT U.S. ATTORNEY, U.S. DEPARTMENT OF JUSTICE, RENO, NV

Mr. **Hill**. Thank you very much, Mr. Chairman and members of the committee. It is truly an honor to have this opportunity to address this committee concerning my knowledge of slot machine cheating.

Let me define what I believe a slot machine is. A slot machine, in my opinion, is a self-contained unit where wagers are made on a game of chance, and payments are either made in parts or in whole by that self-contained unit, or credits are racked up. There is a definition of a gaming device, I believe it's 15 United States Code 1171, for transportation purposes it would include a slot machine, but it is more comprehensive than that.

My knowledge of slot machine cheating was gained as a prosecutor in the district attorney's office and in the U.S. attorney's office in Reno, NV. I've been involved in quite a number of slot machine cheating cases.

The largest and most sophisticated gang of slot cheaters that I'm aware of, although not the only large gang of slot cheaters, is one run by a man named Johnny Vaccaro. My involvement with that investigation began, and the prosecution began, when agents of the Gaming Control Board for the State of Nevada fortuitously found out that the world's largest jackpot, in the amount of $1.7 million and some change, had been illegally set up and collected. They were able to apprehend the person that collected the jackpot, not the person who set it up, but a collector, who is a person that goes along and usually collects a jackpot for a percentage, usually a small percentage, 10 percent or 5 percent or 15 percent of the actual jackpot.

The Nevada Gaming Control Board, agents of the IRS and FBI had expertise which was able to be used in the investigation of what became apparent was a serious problem. I coordinated the investigation of those agencies and prosecuted the case.

Two experienced agents of the Nevada Gaming Control Board identified approximately 30 jackpots that we believe were of a suspicious nature. To make a fairly long story short, through the coordinated work of the three agencies and a grand jury investigation, we were able to obtain indictments and convictions of slot machine cheaters on jackpots paid in the amounts of $400,000, $250,000, $188,000, $151,000, $144,000, $123,000, and numerous smaller amounts. Those, of course, were not the only slot machine jackpots that were illegally set up and collected. Those are the ones that we prosecuted.

The types of machines rigged were mechanical machines, electromechanical machines, and video machines which engaged the latest in electronic computers and microchip circuitry. What it amounted to is, so much for the industry—the slot machine manufacturing industry's claim of their now coming out with the latest and greatest in uncheatable slot machines. One of the most difficult things for people to believe is when I tell them you can cheat a slot machine. They look and they say, "You can't cheat a slot machine. It's a box."

There are so many ways to cheat a slot machine it is amazing. You can drill them and stop—the timing clock, run a wire in, set up the reels—a man I'll get into talking about later developed a method where he could spring the door and run wires in from the outside and never leave a drill mark. They can swing doors where they physically open the doors and there's no key made that will keep a good slot cheat out, and they used restricted keys and double-lock systems and what they call mousetraps to keep slot machines from being closed once they're opened, and alarm devices, and tilt devices that supposedly told you if the door had been opened—they can physically open the door on a macine and set up a jackpot.

In the electromechanical slot machine, which was the state of the art and up to that point the latest in uncheatable machines, they found out it was run by a computer. You could put a magnet on the side, shut down the computer, set up the reels, and it became the easiest slot machine to cheat, not the most difficult, where, unlike mechanical which could take a good slot mechanic sheet 1 minute 45 seconds to 1½ minutes to set up, they found out they could do the electromechanical in as short a time as 15 to 35 seconds from the time they laid their hands on the machine without ever drilling a hole or prying open the machine—with the use of a magnet and wires.

The Vaccaro bunch—Johnny Vaccaro, who I mentioned was the head of that bunch—he, by the way, has recently been indicted as a member of the Mafia by the Los Angeles strike force—had a 27-year-old slot mechanic that worked for him, he was 27 at the time of the trial, he began working for John Vaccaro at the age of about 22 or 23, he was something of a slot genius and he plead guilty and testified at trial. He demonstrated his ability to set up slot machines during the trial that I did involving 8 people—there were a total of 19 people indicted, 17 convicted, and 2 people have never been found—but at any rate, he demonstrated to the jury his ability to set up slot machines, and he could set up a slot machine, depending on the type, from 15 seconds to 1½ minutes. He was somewhat out of practice in that he had been in jail for a while at the time he demonstrated this.

Although the big-time jackpots which I've just mentioned, involving sophisticated cheats get the most publicity, they are by no means the most common jackpot cheaters, slot machine cheaters. Small time cheats make a significant impact on the slot machine industry. Some slot cheats specialize in collecting 5 or 10 $250 to $1,000 jackpots in a week, which adds up——

Senator McCAIN. Excuse me, Mr. Hill. You didn't tell us how Mr. Vaccaro pulled it off on the $1.7 million.

Mr. HILL. Sir, I don't believe that he specifically did the $1.7 million. I believe one of his gang members was involved with other people.

Senator McCAIN. How did he do it?

Mr. HILL. As a matter of fact, the way it was done was the slot machine was a totally video slot machine. It had no mechanical reels, it showed reels that revolved. The door was opened, electronic probe was put in, that electronic probe somehow—and we don't know how to this day—suddenly sprang triple bars on the bottom row and it was a progressive jackpot. That was the first known cheating of a video uncheatable slot machine. After the investigation began we convicted through pleas of guilty one other video collector in the amount of $400,000, and an indictment is out waiting apprehension of another women who collected a $250,000 jackpot, one of the luckiest women alive, who collected between her and her husband, seven different jackpots under seven different names, totalling $1,050,000.

At any rate, the most common type, I would say, of slot machine cheating involves slugging, and it's been around for years. In the old slot machines you would see a window where you could see the last four or five coins played. You don't see that too often any more. Slugging is a very common method of cheating. It isn't stopped very often. The amount of slugs collected in Nevada is measured in the tons. A good slugger—sluggers, people manufacturing slugs, go out and sell them at around $25 to $35 a hundred for $1 slugs. A good slugger can go out and he puts slugs in the slot machine and waits for the drop and can make just about on the average $85 per hundred slugs that he drops into a slot machine, which is a significant impact on any casino's pocket.

The ironic thing is two of the people we were looking for in our investigation that were involved in collecting jackpots were caught slugging. One had collected the $400,000 jackpot, which I mentioned, the other one had collected the $188,000 jackpot I mentioned. They, of course, for their part received less than 15 percent, some place between 10 and 15 percent which, of course, left them in difficult position with the IRS, but at any rate, within 1 year they were caught slugging machines, which of course confirms the fact that they either went through a lot of money, and of course it was a bad jackpot.

Slugging is a significant problem, and it takes money out of the casino pockets. There are lot of other methods to cheat slot machines, including one method that's called a "yo-yo,' a stringer. They drill a coin or attach a string or a wire to a coin and run it down the coin chute and just keep running it up and down. It's called free-playing the slot machine, and you don't have to put too many coins in to milk the slot machine dry at that rate. There are devices to stop that, they can be beaten, and are beaten.

Another method is to cause a runaway of the hopper. This is the reason any time you have a machine and it includes video poker machines, bingo machines, keno machines, any machine that is a self-contained unit that has a hopper is susceptible not only to the slug going in and the sophisticated cheat who can actually get around a computer chip, but also to the person who has developed a technique to make the hopper run away, and that's done with either a wire run up the chute, a wire run through the bottom, a wire run through the top—it depends on the machine—and you can get a slot machine to dump its hopper. It may not be a lot, it may be $150, $250, or $300, depending on the slot machine.

Ross Durham went to work—he went to slot mechanic school—I used to call it slot cheat school—but he went to slot mechanic school, went to work for a casino, walked into the casino, was, of course, helping his friends set up slot machines, he collected a jackpot to get enough money to go to slot cheat school, he set up a whole row of quarter slot machines, set himself up where he could run a wire down the coin receptacle and dump the hoppers. He used to go in there, dress very nice—he was 6′ 6″ or 6′ 7″, he did stick out a little bit—a booster bag under his arm after he got fired because they suspected him of something—and dump all the quarter machines. He would lean like to the side on his way out he had so many quarters.

There are other ways to cheat slot machines, really too numerous, but those are the outside ways for people on the outside. There are ways to cheat them on the inside, too, to cheat at gambling. Slot machine employees that are key men can just obviously open the door and scoop money out into their pocket, out of the hopper into their pocket. Fake fill slips can be filled out. It says we put in $100 into this dollar machine because it was paying out—of course, that can go in your pocket. Fake slot machine payout can be done if you have somebody who will work with you.

Its my belief that slot machines are inherently susceptible to cheating. I believe the point is not whether you call it a slot machine, a slot machine facsimile, whether it's mechanical, electrical, compute-operated with computer chips, whether it's video, it can and will and has been cheated if it's been made. It doesn't make any difference whether it's 5-cent, nickel, 10-cent, quarter, 50-cent, or $1, it doesn't make any difference whether what you display on the screen is watermelons, cherries, a card game, a poker game, whether you have reels, whether you have a video display, whether you play bingo on that machine or whether you play keno, it can and will be hit.

In my opinion, in many ways a slot machine is more susceptible to cheating than other games which are run by people involved in running the games, such as dice, 21, other card games, roulette, bingo, or keno. You do not have personal control of the money coming in, a slot machine has never identified the person who put that slug in it, individuals who collect counterfeit $100 bills often can and do not only detect the bills, because they handle a lot of money in the casino industry but they can often identify that person passing the counterfeiting money.

Cheating without inside help is easier in slot machine systems than it is in the other gaming, and I'm somewhat acquainted—I've done more than just slot machine investigations, but I believe it's easier in slot machine operations.

Inside help, of course, with any gambling game makes cheating possible, and the varieties of methods of cheating at cards, roulette, dice, is unimaginable.

I believe, in reading S. 1303, that it does, in fact, allow slot machine gambling if, in fact, that is modeled after the State, and it will allow poker, it can allow keno or bingo in a slot machine form, and it's a video, and it doesn't matter if it's got wheels, it's a slot machine. I believe that in S. 555 it may allow slot machine gambling. It seems that page 5, where I looked in the middle of the page, lines 13 through 20, it seems to give the ability to have slot machine gambling. Once again, we're talking about poker games, video poker. Lines 25 and the first of the next page it may take it away, I don't know. It's not clear to me whether it does allow slot machine gambling on reservations.

I will try and finish up here real quickly, but the proliferation, if slot machine gambling is allowed in reservations, will probably go into the States because it will be, "They've got video poker, why can't we?" Video poker is very popular, but it is inherently cheatable and I think that there are so many problems that without incredible regulation there will be problems. Nevada has had its problems, obviously. They were lulled into a false sense of security, I think, by these uncheatable machines. I don't think they're feeling quite so secure these days. New Jersey, by the way, was not immune. We asked Ross Durham, when he got caught in New Jersey, if that was the first time he went to New Jersey to cheat jackpots. He said, "No, that was the last time."

In gambling the only product is money, and the susceptibility is amazing.

Mr. Chairman, I had intended to bring with me and submit to you a videotape showing the actual setting up of the $50,000 jackpot by Ross Durham with John Vaccaro and his gang standing around blocking with the collector there ready to collect it when he was arrested, and also some lead slugs just as representations to show you that they are very creative in making lead slugs. Unfortunately, both of those items are flying the friendly skies with my luggage, so maybe if I can have an opportunity some later time to submit those. Thank you very much.

The CHAIRMAN. Thank you very much.

[The prepared statement of Mr. Hill appears in the appendix.]

The CHAIRMAN. Our next witness is Mr. Hannifin.

STATEMENT OF PHILIP HANNIFIN, RENO, NV, FORMER CHAIRMAN, NEVADA GAMING CONTROL BOARD; FORMER CHIEF EXECUTIVE, SUMMA CORP.

Mr. HANNIFIN. Mr. Chairman, my name is Phil Hannifin. I'm a former chairman of the Gaming Control Board of the State of Nevada for the better part of 7 years. Subsequent to that, for about 9 years, the chief operating executive of two of the largest gaming companies in the world. I would beg the Chair's indulgence. I was asked to appear on Monday afternoon, and although I've made some personal notes to speak from, I have not had them typed. Unless you object I would have them typed and submitted to the committee by way of Senator Reid's office.

The CHAIRMAN. All right, sir.

Mr. HANNIFIN. I'm privileged to appear before your committee today to share with you some of my impressions on the proposed legislation concerning gaming within Indian reservations. It would seem clear to me that the U.S. Supreme Court decision in *Cabazon* will significantly affect my State, Nevada, and several other States that currently tolerate some form of gambling activity.

Accordingly, it seems to me necessary that the Congress provide some means of regulating the process and the structure of gambling if it is to be permitted on tribal reservations.

Further, it would seem to me that any such Indian regulation be conformed to existing State laws and regulations and that the Congress should not establish a scheme by which gambling would be allowed without experienced regulation, or that by way of regulation that which would be allowed would result in an uneven playing field; for example, I give you an example in Reno, NV: There is a very large establishment, some 2,000 rooms, over 100,000 square feet of gaming, and immediately adjacent to that property is the Reno Sparks Indian Colony, an Indian reservation.

Now, I don't think anybody objects—nobody that I know of—objects to the fact than on that colony they could open a casino, but everyone says, "My God, be sure that they open it on the same basis that we all operate," because if something goes wrong there, the public doesn't discriminate or understand the difference between this piece of land which is governed by the Indians, or this piece of land which is governed by the non-Indians—it's wrong, it's gambling, its all bad—that's not going to help anybody. It's going to harm everybody.

So we see the need for some kind of conformation of the laws and the regulations.

Gambling, as you all know, for hundreds of years has been a very controversial topic and it's been widely discouraged throughout the world. Perhaps even of more concern than the moral questions involved have been the—at least to the general public—has been the issue of the honesty of the gambling activity, and in my view the most essential aspect of regulation must be the emphasis upon the honest conduct of the game, be it a horse race or poker or slot machines.

This consumer protection is primary for gambling because that is a business that's dependent upon large volumes, and thus the confidence of the public is required. If there is a distrust or a lack of credibility, then revenues will surely fall, and the taxes or fees contemplated by this legislation simply will not appear.

In order to assure or try to assure that these games are conducted in some honest way takes a great deal of expertise, experience, and a lot of money. There must be many people trained not only in the technical operation of the game and the understanding of the game, but in sophisticated law enforcement procedure: rules of evidence, laws of search and seizure, and laws of arrest.

Specific examples have already been given here by other witnesses, but certainly to obtain honesty in the games must be primary. In order to try to do that, again, it would seem to me that as Professor Skolnick has indicated, the lynch pin or the background is a thorough severe examination and investigation of those people who would operate those games who would have an ownership interest. It's interesting to me in this connection that--as I would understand this legislation--the people who regulate and operate are essentially the same, or could be the same. I think that would be a mistake.

It is necessary to look, if we're going to establish some goals for the operations, some worthwhile goals that put forward good public purposes, then the people who operate, as well as the people who regulate, should have a history in habits and associations that are in concert with those goals.

This limitation upon entry into the business, again, has to be achieved by the most exhaustive kind of examination, and you could say to me, "Well, what makes that so hard?" And I would say, just to give you an example similar to what was already mentioned, one party who turned out to be not convicted was a government witness in effect, but had been a pawn, a dupe of organized crime, had as a prior history a commendable record as an Army officer, a successful career as a land developer, and was a practicing attorney. Another was a respected banker and civic leader from Minnesota. Organized crime does get to these folks—to some folks. It's always there as a potential to corrupt, and to unearth it, again, requires great experience, and awful lot of money, and a great deal of time.

Like Stan Hunterton, I don't think that the Congress is interested in funding another several hundred FBI agents—even if they were there are probably more important things to put them on. But certainly it takes that quality of person to staff the kind of agency necessary to regulate this business.

Also, I would want to point out to you, which I don't think I need to but for the sake of the record, that when we're talking about conspiracy and fraud we're not talking about things that are immediately obvious. They are not blatant in their appearance. They are done with a great deal of secrecy and care, and often cloaked in some protection afforded by the law.

You might also ask, having heard some of these descriptions of cheating endeavors, if it's really that hard to determine that an honest game is being presented. Those of us who have seen any kind of an amateur night magic show, or perhaps have seen one of Las Vegas' favorite Seigfried and Roy make an elephant or a tiger disappear from a stage being watched by 1,000 people, could appreciate the difficulty of discerning slight moves of hand that would allow peaking at the next card to be dealt, or the substitution of one cube in a pair of dice. These things can happen quickly, do happen quickly, and ordinarily, having happened, leave no physical evidence. So how do you prove that it did happen?

Add to this the increased complexities for investigation that occurred when employee and customer combine to cheat other customers, as well as the business—let me explain that: it might often happen on a blackjack game that the owner of the business would expect a certain percentage to be routinely held in that game, it might be 15 percent or 14 percent depending on the history and the particular rules in that house how the game is dealt, but fairly steady over a period of a year or more that percentage will show up. Now, the person intent upon larceny understands that that 15 or 18 percent should be produced. How can he produce that and yet become a thief? He cheats this customer to get the percentage high, and sloughs if off to his compatriot to bring it back down. And that's not a unusual circumstance to occur in the business.

Mix in the possibility that, as Don Hill has said, a rigged computer chip could be substituted into the circuitry of electronic gaming devices, and now you might get the beginning of a dim outline of the size of the problem that the tribes must face, that the State of Nevada, and the State of New Jersey already face, and these agencies in the two States, at least, have thoughtfully tried to stymie all of these things before they take place and have really not been successful. I don't know of any gambling game that cannot be cheated. I've never heard of one. No one has ever presented the idea to me that there is a game that cannot be cheated. The sellers of slot machines obviously tell you, but, you know, you're a fool if you believe that.

One more thought for your consideration is that Nevada has experienced street crime rates that are in excess of what might be expected absent gambling—or the gambling environment, the 24 hours, a lot of whiskey, a lot of entertainment, a lot of romance and adventure and risk. In this context it must be pointed out that tribal reservations that most likely will be into this business are surrounded by urban areas of non-Indian jurisdiction, and by communities that will ultimately bear the expense and the penalty of trying to control this crime phenomenon attracted to its environment by the presence of the gambling.

Now, Nevada and New Jersey have had—and Nevada commits itself to that extra effort, and so does New Jersey, Atlantic City, committed itself to that extra effort knowing that it's going to occur. It's extremely expensive. The people pay a penalty for it.

As an aggressive businessman, I would welcome the potential opportunities that will result from this legislation. I can see great possibilities. But as a prudent businessman I urge you to give full consideration and recognition to existing State laws and to mandate sound systems of regulation and control, and in that context I would support the so-called compromise which is S. 555.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

[Prepared statement of Mr. Hannifin appears in the appendix.]

The CHAIRMAN. I think it should be safe to assume that the Congress of the United States will not pass a measure that would authorize casino-type games or class III. In all likelihood it will be limited to what we have described as bingo. That being the circumstances, would your concerns still apply? You've been talking about casino-type gambling, but would that apply to just bingo?

Mr. SKOLNICK. If I may respond to that, I would certainly have concerns, yes. As Mr. Hill pointed out, all of these games are defeatable, and if you had bingo games I would want to have strong regulation of those bingo games. Mr. Hannifin's reference to magic is very well taken, and if you have a game in which the winning numbers are going to be drawn in that place, you will have a problem.

You know, you may recall that some eastern States had legendary illegal numbers games. Now, nobody would have believed in the integrity of those numbers game if the winning numbers were drawn from a hat or bouncing balls. The winning numbers were always the last three numbers of the amount of money bet at the racetrack the day before or the amount of shares traded in the stock market. It was always some outside set of numbers. When you're in an establishment and you have a set of number that are going to be drawn you can either fix those numbers or you can fix the people who can hand in their numbers late. This has been done numerous times in keno and so forth, so that I would have very serious concerns, yes sir.

May I add one other point? I have very serious concerns about gambling, like you, sir. You may recall that some years ago, after New Jersey instituted casino gambling, a number of eastern states were very interested. I was called to testify in New York before the commission that was considering the legalization of casino gambling in New York, and before the New York State legislature, and I gave this kind of testimony. I know that this kind of testimony had an impact in the decision of both the governor and the New York State legislature in reconsidering whether they really wanted to have this kind of gambling in New York State.

I would worry very much about developing a gambling industry for our Native Americans. I understand the Congressional policy of economic development, I fully subscribe to it, but I wonder if this is the way to go. I would worry about it, yes.

Mr. Hill. Mr. Chairman, my additional thrust and main concern is about slot machine-type games, which my reading of the bill a receptical or electronically-determined, or electro-mechanical facsimiles seems to be to be a slot machine. I don't know if you consider those casino-type games or not. I think there are many problems with those, as been stated.

There are a lot of ways to cheat at other games, which should be taken into serious consideration by this committee. You can load balls with paint, you can use a random numbers generator which looks good until you bypass them. You can get in and run what basically is pastpost. Pastpost, in other words, wait until the selection of the numbers is known before you can change numbers on a card, which is possible. There is nothing that cannot be cheated.

The Chairman. Are slugs readily available?

Mr. Hill. Yes, your Honor.

The Chairman. Really?

Mr. Hill. Excuse me, yes sir, Mr. Chairman. I spend most of my time standing and addressing judges. I apologize.

The Chairman. Where do you buy these things?

Mr. Hill. They are illicitely manufactured. They're not in the five and dime store. But one of the methods they use is to get tire weights. Take an Ike dollar or a casino slug and shove it in plaster of paris. Cut out these slugs in approximately the weight of an Ike dollar, drop it in, put it in a stove, melt it down, and it comes out pretty good. I'm sorry about the friendly skies losing my slugs, but you could have seen some fine Ike dollars, casino tokes, and even 50-cent pieces. People manufacture them.

My understanding, not being in the business but talking to some fairly knowledgeable sluggers, you can manufacture them for $8 to $10 for $10C, and they sell them for $20 to $30, $35 for $100.

The Chairman. I gather that all of you would recommend some sort of licensing of these management companies?

Mr. Hill. Absolutely.

Mr. Hunterton. That's probably the key to the process.

Mr. Skolnick. Yes.

Mr. Hannifin. Agreed.

The Chairman. Senator McCain.

Senator McCain. Thank you, Mr. Chairman.

Mr. Hunterton and Mr. Skolnick, would the degree of corruption in Las Vegas have been uncovered in all likelihood and as timely as it had been if it had not been for the Federal Government being involved, if it had been left to the State government?

Mr. Hunterton. Senator, I'd say the answer to that is no, it would not have been, but in fairness to the State that's also an incomplete answer. The Federal Government brought to the process, once it finally focused its attention on this problem, national jurisdiction, which the State lacked; the capacity to wiretap, which the State lacked; and the capacity to approach some of these crimes as income tax violation crimes—when we couldn't prove the skimming directly we would come up with the income at the other end; the fourth big element was we came with a few informants from a few of the major organized crime cities in the country who would kind of guide us at the beginning as to what to look for.

So, yes, we were able to do it, but because we happened to have tools which the State did not.

Mr. SKOLNICK. May I add to that? In principle, if the Federal Government was willing to invest the kind of resources in each Indian reservation that was going to have gambling that it invests in Las Vegas, plus the State resources, I wouldn't be concerned. But I think it would be so expensive that it's not realistic.

Senator MCCAIN. Well, it's interesting to me that there's an advocacy of State regulation of Indian gaming, and yet it's very clear that we have a classic case here where Federal oversight and investigation was what uncovered the corruption. To me those two don't match up very well.

Mr. HUNTERTON. Senator, may I try to explain the discrepancy. Now, I'll give you one example.

Senator MCCAIN. Yes; but let me make one point before you do. The opponents of this legislation do not want to have any Federal involvement. They want to turn it over to the regulation by the States, so please go ahead.

Mr. HUNTERTON. I believe, to answer the Senator's comment first and then back up to the question—there will continue to be a very significant Federal presence, I am sure, from the investigative and prosecutive end, as opposed to licensing and regulation. I think now that the Federal Government has gotten the bit, if you will, in its teeth I don't think you're going to see any lessening. They'll be there. They'll be looking at it. Victoria Toensing said that they were doing so even now.

But to address the Senator's point—I think it's a good one—about the apparent discrepancy of why are we in favor of State regulation if the Federal Government had to come in and clean it up, it's too simple. One of the first investigations I worked on in Las Vegas involved skimming from slot machines. It involved at least $7 million over four casinos which were commonly owned. We put the case together, we prosecuted people for income tax evasion because we weren't able to get back, except statistically, and prove the skim had taken place, and it was one of the building blocks as we worked our way up to some of the major prosecutions of members of organized crime families.

The investigation which uncovered the existence of the slot machine skimming was done by the Gaming Control Board. We took it and were able to use our jurisdiction over income tax laws to, if you will, get the glory. But the credit for the background work has to go to the State.

Mr. SKOLNICK. If I may answer that, I was studying this process at the time. There are really three prongs to control at this level. One very important prong that the State did very well was investigation. Now, the State did an investigation of one of the parties, Frank Rosenthal, and as a result of that very careful investigation strongly opposed his licensing and he wasn't licensed. A lot of what was uncovered during that licensing investigation was given to the Federal authorities so that Feds and the State worked to gather on the investigative end. So you've got licensing, which the State's done quite well, as well as could be done by the Feds; investigation which is done jointly; and prosecution which the Fed does best.

I'm not suggesting you take the Fed out of it——

Senator McCain. I don't believe the bug in the basement in Kansas City had anything to do with the State enforcement officials, Mr. Skolnick.

Mr. Skolnick. Well, when you say it had nothing to do with, the information that was gained initially by State enforcement officials was shared with the Federal Government. There were, in effect, working together.

Senator McCain. I understand that. But the mechanical act of putting the bug in had nothing to do with the State.

Mr. Skolnick. At that time, and I think presently, the State of Nevada did not have wiretapping authority. I'm for having wiretapping authority. I'm for all the controls we can get. But I think it has to be a State-Federal collaboration. If you take the State out, if you take the licensing and investigative part of the State out, then you're losing 1½ of your control prongs.

Senator McCain. And I believe the same argument is made if you take the Federal Government out.

Mr. Skolnick. That's right. I don't think we should.

Senator McCain. I'm pleased to hear that. That is not the position of others who have appeared before this committee.

Thank you Mr. Chairman. Mr. Hill and Mr. Hannifan, if I'm in Reno I would certainly appreciate a practical tour of some gaming operations in order to see some live examples of the problems that you described. I mean that seriously.

Mr. Hill. I'd enjoy doing that, Senator.

May I briefly say I was a Federal prosecutor at the time that I did this prosecution. I was trusted, fortunately, because of my prior association with the State agents as the Deputy District Attorney. It was a wonderful opportunity for the Federal Government to get some expertise in slot cheating which was not there. Without the State agents, of course, it would not have been possible. But the oportunities to be a Federal prosecutor on a case that involves slot machine jackpots in three different counties in Nevada, two different States, Nevada and New Jersey, collectors from California, Nevada, New Jersey is very advantageous, but it was a very close operation. It was very fortunate to have the cooperation which may have been made in one of the statements by Mr. Hunterton or his prepared statement, was not always there.

Thank you.

Senator McCain. Thank you, Mr. Chairman.

The Chairman. Thank you very much for this most enlightening testimony.

Mr. Hunterton. Mr. Chairman, may our prepared remarks be taken for the record.

Mr. Chairman. All of your statements have been inserted in the record immediately following your oral presentations.

I would like to announce to all witnesses that the record will be kept open until the 15th of July if you wish to submit addendums or corrections——

Mr. Hunterton. Or slugs.

The CHAIRMAN [continuing]. Slugs. You may do so.

Thank you very much.

May we have a 5-minute recess.

[Recess.]

The CHAIRMAN. Our next panel consists of Mr. John O'Neill, executive vice president, British American Bingo, Phoenix, AZ; and Mr. Joseph Bowen, president of the Indian Development Opportunity Corp. of Scottsdale, AZ.

STATEMENT OF JOHN O'NEILL, EXECUTIVE VICE PRESIDENT, BRITISH AMERICAN BINGO, PHOENIX, AZ

Mr. O'NEILL. Well, good afternoon Mr. Chairman and members of the select committe. May I preface my remarks by thanking you, as a visitor to your country, for giving me the opportunity of addressing the Select Committee on Indian Affairs as a representative of management company.

My company, British American Bingo, operates three Native American bingo games, one in Auburn WA, one in Lemoore, CA, and one in Albuquerque, NM. Two of the games we purchased, as it were, from previous management companies. The game in Alburquerque we built on the Greenfield site.

The panel before me alluded to the use by organized crime of respectable front men. I can confirm British American Bingo is a wholly-owned subsidiary of Bass P.L.C., which is a significant and major English corporation. Bass started in 1775, basically as regional brewers, and in the intervening 200 years our company's grown to be one of the largest companies in Europe. Those of you who have visited England will almost certainly have seen, if not visited, 1 of our 8,500 pubs and restaurants. We also own hotels, vacation resorts, a number of brewing technology companies, and, additionally, a small part of our business is a company which owns and operates 80 commercial bingo centers throughout Great Britain.

Mr. Swimmer early this morning posed the question: is bingo a long-term industry? Our experience in England is that if correctly managed, it is. Commercial bingo was established just after World War II, mainly in deteriorating movie houses. It's now a mature industry that employs thousands of people and provides service to hundreds of thousands of customers. It's very closely supervised by the English Gaming Board—which the professor on the panel before me alluded to.

The Gaming Board has a very well developed and inter-related system of operative licenses, game licensers, and roving audit teams who examine the books and management practices within each bingo facility.

The Gaming Board has been remarkably successful in keeping undesirable people out of the English bingo industry. They have had their problems with the much more complicated issue of casino management and control but in the main have been successful.

My company moved to America over 2½ years ago seeking an expansion opportunity, and since that time we've consistenty come to Washington to support sensible regulation enactment. We feel this is a vital part of the future of this industry.

We see many parallels between the growth of bingo in our country in England, and here in America. Bass is a long-established company, and through that company I've inherited the disciplines of a major corporation. We are very conservative in outlook. The vast majority of our 69,000 employees are honest; but notwithstanding that we have developed the necessary control disciplines to prevent corruption and fraud by employees.

We feel that in its mature phase the bingo industry over here can benefit by the involvement of companies such as mine. I don't hold myself up to be paragon of virtue or efficiency, but I can certainly provide a much better, safer service to tribal communities that some of the get-rich-quick operators who have entered this immature market.

We've heard some bad news and will continue to hear bad news about management companies that are not honorable and don't operate correctly. There is some good news to be told. My company is involved with three businesses, and as a direct result of our involvement one of the tribes has managed to refinance the capitalization of the business, and in doing so get out of a punitive fixed rate of interest.

One of the tribes has managed, with our assistance, to further enhance the attractiveness of their building and actually make it safe. We found that one of the corners of this—I think it's 36,000 square feet—missed the foundation footing by 6 inches in the corner. It was built in a rush.

One of the businesses has turned around from an alleged loss and is now heading for $1.6 million profit for the year.

Between these three businesses we employ over 400 people; 60 percent of them are tribal members, and approaching 65 percent them are Indians of various groups.

My company is not happy with the current uncertainty that exists in this market. We've invested $10½ million in this industry, and although our minds were set to rest, to some degree, by the passage of the *Cabazon* decision, we still feel that there is a more than commercially reasonable level of risk. We look to Federal regulation to provide more carefully perceived calculation of risk in this industry. I think if this does go through you will find that companies such as my own, both England and here in America, will move into this industry and begin to crowd out some of the less desirable operators who undoubtedly do exist.

I have no expertise in the question of organized crime. I have met a considerable number of people of this industry who operate as bingo managers. A number of them are remarkably talented and I'd be very happy to employ them or work with them. A number of them I wouldn't employ as the janitor. At the moment anybody can get into this industry and there, I think, lies one of the biggest problem.

I think in the present term the real problems that are faced by the industry and the tribes are those that face any retail business, those are employee theft, pilferage, product shrinkage, and then we move on to general incompetence and dishonesty at all levels.

A responsible management team, such as my company's, will spend a lot of time on motivation and communication as well as control techniques. For example, we have a totally integrated system of cash control which links back to inventory. We developed this system with the assistance of Ernest & Whinney, one of the big eight accounting firms here. That system was not cheap. We spent close to $200,000 developing it. We take the control of cash in this industry very, very seriously, but I'm not sure that the control mechanisms that exist in a large number of the games at the moment are at all adequate. A number of games that I visited don't even have the rudimentary protection of a cash register in the entrance. The money simply gets thrown into a cookie jar. In its current form the industry is at risk from unscrupulous operators.

Another basic concern is that in the much broader issue of tribal sovereignty—which I do support—and class III; I'm concerned that no legislation at all will be enacted, and that bingo regulations will slip down the crack and we will continue with a totally unregulated industry. This will be bread from heaven for the unscrupulous who do exist in the industry.

I'm firmly convinced that the key to control is a national commission that can build up a cohesive, coordinated body of experience. I'm not entirely comfortable with the concept of putting the fate of my company's investment in the hands of the local State. I think it may be that we will find our position will be deteriorated and eroded. I have to admit that the competitive advantage that we enjoy in terms of being able to offer higher prizes is one that is absolutely fundamental to the success of the business. Having said that, other businesses in the gaming industry do enjoy near monopolistic advantage—look at some of the states with their lotteries.

I now move on to another issue which concerns me, that is the question posed in the various types of legislation, of how much money should the management company be allowed to make? My preferred position is that we should be given flexible terms, the right to negotiate the terms that are most appropriate to the tribe that we are dealing with at that time. I can, however, fully accept the concerns of a number of the people I have met here in Washington, and in the tribes, that in some instances we have small tribes—one person, five people—who may not have the commercial acumen to negotiate a fair, well-balanced contract, and for that reason my company is happy to move along with the suggestion that the contract should, in a general term, be specified in legislation, and we can live currently with our three contracts with seven years and a clear forty percent net profit after amortization of debt.

There remains the further question of dealing with the definitions, of course, a very important issue but one which I omit here for brevity.

I would point out that if the legislation is intended to be entirely hostile to management companies and prevent us from earning a good return on our capital in this risky market, it will undoubtedly scare away companies like my own, and it will leave the field wide open to the unscrupulous and the get-rich-quick people, many of whom perhaps regard a life of more than three years as a bonus anyway—because they've ripped the money out in 2 years leaving the tribe with very little income to live on. I think a longer term contract that is protected and has adequate recourse to a central body for grievance procedures, disputes, and resolutions is essential. This central body will have experience of the industry—which currently the BIA does not possess—will work to the benefit of all concerned and will continue to attract better quality companies.

We seek to support your legislation, Mr. Inouye, and we look forward to the establishment of sensible controlling legislation.

I close my remarks now with a thank you from my company to the Senate for allowing me this opportunity.

[Prepared statement of Mr. O'Neill appears in the appendix.]

The CHAIRMAN. Thank you very much.

You spoke of a fair return. Can you describe for us the contractual arrangements that you have with the three tribes?

Mr. O'NEILL. In general terms I have—the contract in California is 12 years in length and is a 45–55 split of profit between myself and the tribe.

The CHAIRMAN. Who gets 45?

Mr. O'NEILL. I do. The tribe gets 55. There is, however, a very substantial guarantee payment each month paid to the tribe. At certain parts of the year—it's in the San Joaquin Valley, it's very seasonal—and in the winter months we've found from our previous experience, being there two winters, we've actually ended up with nothing for those months because we've maintained the tribe's guarantee payment so they can support their various programs.

The CHAIRMAN. Who built the facilities?

Mr. O'NEILL. A firm from Texas. It was a typical three-man band where somebody had the money, somebody was a bingo expert suddenly, and somebody was a builder. The other contract——

The CHAIRMAN. What about the other two?

Mr. O'NEILL. The other two contracts—one is a 5-year with a 2-year option, and that has a very clear definition of a monthly guarantee payment to the tribe followed by retirement of the debt over a 3-year period through amortization, and then we move to a 60–40 split. If we move into the second 2-year option we go to a sliding scale profit share, which would eventually take us back up to 60–40 split.

The CHAIRMAN. You spoke of sovereignty and mentioned a tribe with one member or five members. In the California tribe, how many members are there?

Mr. O'NEILL. About 300.

The CHAIRMAN. 300?

Mr. O'NEILL. Yes.

The CHAIRMAN. Men, women, and children?

Mr. O'NEILL. Yes.

The CHAIRMAN. What about the other two?

Mr. O'NEILL. Well, the other tribe is the Muckelashoot Tribe, which I believe has 800 plus members, and the other tribe is the community of the Pueblo de Isleta, who have, speaking from memory, something approaching 3,600 members.

The CHAIRMAN. What sort of experience has your operation had on cheating, skimming, corrupt practices, because I am certain that yours is not perfect.

Mr. O'NEILL. No; it's not. We've regrettably had plenty of experience over the years. I can give you a few examples which are based on my experience here in the States and on the 40-odd years experience back in England.

The simpliest way to steal is simply to take the money and run, and we've had a recent example where an employee simply took $2,000 and left. That type of approach is off basis, and it enhances career mobility, as we say.

More sophisticated ongoing scandals will include fixing the odds to win—and this is one of the things that concerns us in this American market. The current equipment is basically equipment that was designed for the charity business, and is simply being converted to much broader commercial use. You don't have the look, Senator, of a typical bingo player, and I wonder have you been to a bingo parlor?

The Chairman. I try not to.

Mr. O'Neill. OK. Well, if I may describe, there is a unit there that's called the blower unit that blows ping pong balls around and you pull them out. There are any number of ways of tampering with that fairly primitive machinery, and in the days back in England when we employed this machinery we employed people on a full-time basis to go around and monitor these machines. Some of it is simple tricks of slight of hand. There was a gentleman I think from the Barona, again, 1 year or so ago who was prosecuted for palming again and producing a predetermined pattern of numbers.

On a more subtle note the customer gets cheated in that you can, for example, ensure that certain numbers don't come up the air-blown chute. You will make the ball heavier, you puncture it with a pin, you coat it will nail varnish, you can stick a transparency that's got a lead foil on it, and the net effect is that you will make a chosen game, say a jackpot game, much more difficult to win so that the jackpot can get progressively and artificially very high, but the sad fact is that the customer will find it very difficult to actually win that jackpot.

You then move on to other straightforward problems which are the problems shared by any retail business, and those are the problems: underaccounting at the door, inflating expenses—we took over a business here in the States where there was a consultant on the books at $20,000 a year, but nobody had ever actually seen the chap, so I question was he actually a legitimate expense. We have a suspicion that at one of our games, before we took over, an assistant manager was in the habit of taking $300 a week to pay the printer in cash. Must as we trust our employees, under the new system now we separate the cash payments and the invoicing so that all payments go from our corporate office in Phoenix, and this stops that fairly rudimentary sort of scandal occurring.

The Chairman. You indicated that 60 percent of your employees are tribal members. The other [illegible]0 percent—who are they?

Mr. O'Neill. Well, in New Mexico it's a mixture of various ethnic groups leading up to our management team. Each of my clubs, at the moment, is managed by an English national because I took the view "Better the devil I know than the one I don't."

The Chairman. What percentage of your management team would be tribal members?

Mr. O'Neill. In our business in Isleta we have six staff members who would be considered junior management, five of those positions are filled by members of the Isleta Pueblo. We then have another tier where they are departmental heads, a marketing manager, a transportation manager, a catering manager. Currently none of those are tribal members, but we've got deputies who are tribal members being trained up for those positions. We have a similar position in our other two games.

The CHAIRMAN. All you general managers are nontribal?

Mr. O'NEILL. Currently that is the case. Of my deputy managers, the ones who are in training to be the successors——

The CHAIRMAN. How long does it take to train? You have been in one place for 12 years?

Mr. O'NEILL. In England, we give our people a 4-year training program.

The CHAIRMAN. You have been in a place for 12 years, you indicated, in one of the operations you have had 12 years?

Mr. O'NEILL. We have a contract for 12 years, and we've been there——

The CHAIRMAN. How long have you——

Mr. O'NEILL [continuing]. Two years.

The CHAIRMAN. Two years?

Mr. O'NEILL. Yes.

The CHAIRMAN. That other place—how many years have you been?

Mr. O'NEILL. We opened in September of last year in both operations.

The CHAIRMAN. Thank you.

Mr. Bowen.

STATEMENT OF JOSEPH BOWEN, VICE PRESIDENT, INDIAN DEVELOPMENT OPPORTUNITY CORP., SCOTTSDALE, AZ

Mr. BOWEN. Yes; thank you, Senator.

I'm going to make my comments brief because I know there's a large panel behind me, and I understand that we have a time problem, so I've pared down my testimony.

First of all I'd like to introduce myself. I'm Joseph Bowen. I'm vice president of Indian Development Opportunities Corp., commonly referred to as IDOC. I'm from the S'Klallam Tribe of the State of Washington, and I had the privilege of meeting with you when you were out there meeting with the Puyallup Tribe in Tacoma. I think we met out there that time, and talked about getting together again at some later date. I worked as an attorney and judge at the Puyallup Tribe for approximately 9 years, and have written the first comprehensive gaming ordinance that was passed by the Bureau, I think about 7 or 8 years ago, and the Puyallup Tribe itself has had three halls that have been in business for 7 or 8 years, one of the first tribes to get into bingo. It's helped the tribe and I know their representatives are here to testify on the next panel.

Our company is very proud to be a conglomeration of two different companies that can assist tribes, and I think the type of companies and corporate investors that are being enticed onto the reservations now are of the kind and quality that can assist our people in a lot of different ways besides just bingo, but in other forms of economic development, and other types of investors are watching this legislation very closely.

Our company is proud to be a member of the National Indian Gaming Association—I think we might be one of the only management companies that is. I had the privilege of serving on the National Task Force for Indian Gaming in my former representative capacity for the tribe. For 3 years we held hearings around the country, looked into the problem of management companies. So I'd like to say that we support your bill, and I think that there's a real important point, and that is that it is very necessary to have strict standards for management companies. I think most of the kinds of problems that we ran into on the task force weren't necessarily those misfeasance of—but were the kind of problems of well-intentioned but inexperienced people who were underfinanced jumping into the business quickly, and therein lay most of the problem.

So I think that thorough financial backgrounds, besides the BIA background, thorough management expertise and background, and those kinds of standards that are represented in the bill, are very important to the industry.

I think that, like Mr. O'Neill, I would like to state that there needs to be, more flexibility regarding percentages and length of management contracts. I have had the unique opportunity of being on both sides; representing tribal and management operations. We formed our own company a little over 1 year ago. The flexibility I am speaking of would, of course, mean that the majority interests of the operation would belong to the tribe. But there are approximately 287 tribes out there. The ones that are in downtown Fort Lauderdale and all the nice areas are already up and operating.

A lot of tribes have been waiting to see what was going to happen with *Cabazon*, to see what was going to happen with this legislation. I'd hate to see well-intentioned but too restrictive rules regarding contract length percentages and payback to the corporate investors coming onto the reservations so that those tribes that are in marginal areas, that don't have all the demographics of a lot of people, that may not get someone to come on unless they can do it for 10 or 15 years and get 45 percent, they won't attract the seasoned and quality management companies, I think this is a serious concern.

I also think that on the grandfathering issue that there should be some limit set there—and I've heard rumors and I never have personally been able to chase down which ones were the outrageous ones the rare exceptions to the rule. I believe it is very important, that contracts be grandfathered in as long as they're no longer than 15 years with the majority going to the tribe, and that each subsequent five year period is based on a declining percentage basis.

Basically I think those points of the flexibility, for example, up to 10 or 15 years and up to 45 percent. Right now presently the BIA guidelines, which we helped draft on the task force that are in present use right now, are good. They allow for up to three 5-year periods, and you can negotiate the second and third 5-year periods up front as long as the percentage drops. It's like you go 5 years for 45 percent and the next 5 years for 40 percent, and the third for 35 percent et cetera—whatever can be fairly negotiated with paying the money back amortized over 3 or 4 or 5 years or up front if the tribe should so choose, with Secretarial approval at the area level.

I think it's a good idea that we have a Federal Commission. I think it's good we have regulation. I think the industry is a Godsend for our people, I've seen what it's done on our own reservation, and the revenue that's been produced from it. But I would just like to reiterate that I think that you're going to attract good people and good management companies if you're not too restrictive in the legislation, tribes are competent negotiators, not children.

Our company is comprised of Economic Research Associates, which is the oldest international marketing firm in the United States, they have seven offices around the country, and Grenada P.L.C., which is a competitor of Mr. O'Neill's in England who has 56 bingo halls in England, but also is a major private television company with high licensing standards as well as other recreational-leisure time interests—a very conservative company, who under strict U.K. gambling license have just recently finally agreed to join our company, so we bring a lot of expertise, a lot of varied assistance and investment opportunities to the reservations. We can do a lot of other things besides bingo on the reservations; but I know that if Congress is too restrictive in their legislation we'll do what the states couldn't do to Indians, through legislation by discouraging good outside corporate investment on the reservation.

I'd like to thank you very much for the opportunity to testify.

The CHAIRMAN. Both of you have indicated your pride and confidence in your organizations, on their long history of much accomplishment. What are your thoughts on licensing your management groups?

Mr. BOWEN. I think that it's absolutely necessary to license our management groups and to have high, strict standards. I don't think the standards that are in place right now through the Bureau are adequate at all. All they are—I think they check on you and if you don't have a felony then you're okay to manage in the business.

I think there should be high standards that are set out in the bill about financial background, management experience, et cetera. We should be licensed, and I agree with that.

Mr. O'NEILL. I agree as well. In England the manager of each club must have a gaming board license. If he misbehaves in any aspect of his personal or business life the commission yanks his license—no license, no job, and that's a remarkable incentive for most people.

The CHAIRMAN. Mr. Bowen, what do you think about the idea of a referendum, tribal referendum?

Mr. BOWEN. I'm not sure I understand that question, Senator.

The CHAIRMAN. Earlier this morning Secretary Swimmer suggested that there are certain tribes where members are not too keen about gaming activities in the reservation; however, they feel that since the leadership has decided they have no say. Would you be in favor of a referendum or a vote taken by the tribal members to determine whether there shall be gambling or no gambling on a reservation?

Mr. **Bowen**. I'd be in favor of any form of activity which allowed a tribe to determine its own self-determination on what they wanted to do and what they didn't want to do. It's been my experience, being born and raised on the reservation, that not too many tribal leaders are going to do what their constituents don't want them to do, and if they did—most constitutions have a general council provision where they can recall members of council if they get involved in something they don't want, or they can change the actual law. I think most of the IRA constitutions are that way. I therefore believe that a tribe should make such a determination as they customarily do with all serious considerations, tribal council action is usually sufficient.

The **Chairman**. So you don't mind a referendum?

Mr. **Bowen**. It doesn't bother me. But I can't speak for the tribes and how they handle their decisions, that's their business. We shouldn't dictate to them on such matters—that's their own self/determination.

The **Chairman**. Thank you very much.

Mr. **Bowen**. I'd also like to thank you for your representation here on the committee, just generally. I was at NCAI when you gave the speech and talked about our memorial, and I think the thoughtful selection of your staff is really appreciated by a lot of people, along with your own personal commitment.

The **Chairman**. I thank you, sir.

Our next panel consists of the Hon. Roleen Hargrove, vice chairman of Puyallup Tribal Council; the Honorable Raul Silvas, vice chairman, Pascua Yaqui Tribe of Tucson, AR; the Honorable Wendell Chino, chairman of the Mescalero Apache Tribe of New Mexico; the Honorable Roger Jourdain, chairman, Red Lake Band of Chippewa Indians of Minnesota; the Honorable Nora Garcia, chairperson, Fort Mojave Indian Tribe of Arizona, California, Nevada.

Ms. Susan Harjo was scheduled to testify. She has advised us that the National Congress of American Indians, of which she is executive director, will be meeting in Portland next week, and at that time this matter will be discussed and after the Portland meeting, written testimony will be submitted to the committee.

Shall we start with the vice chairman of the Puyallup Tribal Council?

STATEMENT OF ROLEEN HARGROVE, VICE CHAIRWOMAN, PUYALLUP TRIBAL COUNCIL, PUYALLUP, WA ACCOMPANIED BY BERTHA TURNIPSEED

Ms. **Hargrove**. Thank you, Mr. Chairman. I'm Roleen Hargrove, vice chairwoman of the Puyallup Tribe. Today I have with me our newly elected chairwoman, Bertha Turnipseed, and I would like to ask that she be allowed to present the statement on behalf of our tribe today if that's at all possible.

The **Chairman**. We'd be very happy to receive that testimony.

Ms. **Hargrove**. Thank you.

Ms. **Turnipseed**. Thank you, Mr. Chairman. I appreciate the opportunity to be here today and testify. We have submitted a written testimony, so I'll just highlight that.

The Puyallup Tribe appreciates the Federal policy which will reaffirm the Federal commitment to tribal self-determination, self-government and self-sufficiency.

The Puyallup Tribe of Indians endeavors to make these policies through effective management of local resources, creation of appropriate Tribal enterprises, and promotion of tribal member development and investment.

This free enterprise approach to tribal government has been very successful. The revenues gained through taxes and licensing fees fund the various aspects of tribal government operations, including administration, law enforcement, planning, and contribution to a variety of social service programs.

The Puyallup Tribe has established a successful system for licensing, regulating, and taxing bingo games owned by tribal members. In 1980 the Puyallup tribe enacted both a bingo ordinance and a gaming ordinance to license and regulate gaming on its reservation lands. The ordinance was drafted in close consultation with officials from the Bureau of Indian Affairs an subsequently approved by the Secretary. It provides for licenses to be issued by the tribe to tribal members who own and operate bingo games under tribal regulations. In addition, the tribe imposes a tax on the bingo games of 17¼ percent of gross profits. This is in addition to an anual bingo license fee and a regular business license fee.

The taxes and fees raise a significant amount of funds for the tribe, almost $500,000 per year. This constitutes, by far, the major component of all moneys which the tribe receives from sources other than the Federal Government. The very ability of a tribe to function as a government directly depends on its revenues from the bingo taxes and fees.

The approach taken by the Puyallup Tribe in regard to bingo games is consistent with its approach in other areas. The Puyallup model is to license and tax individual enterprises without becoming involved in the actual sales or business operations. According to our Council, the philosophy of a tribal government is to tax and regulate. Example, to govern rather than to operate business itself.

The Puyallup Tribe, like the United States, and most States, has chosen this system of regulation and taxation of private businesses rather than the alternative of operating its own public business. It is a choice that should be respected.

The Puyallup model has encouraged individual enterprises and initiatives among tribal members and resulted in three highly successful bingo operations on the reservation. These games employ a total of 115 persons, over half of them Indian, and many of those tribal members. The individual owners, not the tribe, are at risk in the construction and operation of the games. They are able to operate the games free of tribal politics, and the profits of the games not paid to the tribe in the form of taxes are retained by the tribal members and their extended families who own and operate the games.

In part this choice was made because a tribe did not wish to take on expense and risk associated with the financing and construction of a new business venture. The amount of debt necessary to undertake a bingo operation would shackle the tribe for years to a bank or non-bank entity that would put up the front money, and in part the tribe did not wish to yield control of a management company that might have little long-term commitment to the tribe and its goals.

The total lack of corruption and absence of even the suspicion of any influence of organized crime is undoubtedly due to, at least in part, to the fact that the owners and operators are tribal members who are committed to the welfare of the tribe, not some outside influence there simply to manage a game and take away a percentage of the profits.

The legislation should preserve the Puyallup system of gaming regulation.

One of the stated purposes of the Indian gaming bills is the goal of promoting tribal economic development, tribal self-sufficiency, and strong tribal government. Yet, should the legislation foreclose the Puyallup tribe from licensing tribal members to operate individually-owned games and taxing the profits of these games, it would sound the death knell for one of the most successful instances of tribal self-government and economic self-sufficiency in the country. The Puyallup system has important benefits. All profits of the bingo enterprises are retained within the tribe and its members rather than hundreds of thousands of dollars falling off reservation to non-Indian management companies.

Individual enterprises and initiative among tribal members is encouraged and rewarded through a system of regulated tribal enterprise. The risk, both financial and legal, to the tribe is minimized. There is no outside influence from non-Indian management companies which, even if regulated, still pose the threat of action as divisive outside interests that may not have the welfare of the tribe as their primary goal.

The tribal government acts as a sovereign nation exercising powers of regulation and taxation rather than a business operator. Proposed legislation that denies this free enterprise approach threatens the success of our industry, assaults self-government, and undermines our efforts at realistically attaining self-sufficiency.

In respect of these basic concepts the decision as how to bingo games are operated and managed must be a tribal government process, not an assumption of tribal government authority. Accordingly, the tribe urges that any legislation enacted by Congress provide that any bingo games owned by tribal members and regulated by the tribe be preserved.

I thank you again for the opportunity to be here.

The CHAIRMAN. Thank you very much, Madame Chairman.

[Prepared statement of Ms. Turnipseed appears in the appendix.]

The CHAIRMAN. Our next witness is the Honorable Raul Silvas.

STATEMENT OF RAUL SILVAS, VICE CHAIRMAN, PASCUA YAQUI TRIBE, TUCSON, AR, ACCOMPANIED BY: ANNE L. HOWARD, WASHINGTON RESPRESENTATIVE

Mr. SILVAS. Mr. Chairman and members of the committee, thank you for the opportunity to present testimony today on behalf of the Pascua Yaqui Tribe of Tucson, AZ. Also joining me here today is Ms. Anne L. Howard, Washington Representative of the Pascua

Yaqui Tribe. Ms. Howard will be available to assist me in answering questions that the committee might have.

The Pascua Yaqui Tribe strongly supports the legislation. We urge this committee to enact Senator McCain's bill, S. 1303, during this session of Congress. We believe this legislation is absolutely essential if Indian gaming operating will succeed with this legal and vital business.

The current lack of any Federal legislation established to protect Indian gambling, in particular bingo operation, has resulted in repeated challenges to the tribal sovereignty. And has, time and again, left many tribes, particularly the Pascua Yaqui Indian Tribe, at the mercy of unethical management contractor, innumerous lawsuits. Because Indian bingo is preserved as the high risk business, very few if any banks or conservative investors are willing to risk their capital in a business that could considerably be closed down tomorrow by the courts or by the Congress, even so, the *Cabazon* case was decided by the Supreme Courts in favor of Indian tribes.

The Pascua Yaqui Tribe particularly supports the stringent requirements and high standards for management contracts as set forth in the proposed legislation under S. 1303 and S. 555. We have several amendments that are especially directed at further strengthening this section of the bill. These deal with management contracts, and I will briefly summarize those proposed amendments after my brief statement.

A detailed explanation of our tribal proposed amendments can be found in my prepared statement beginning on page 45 under section on recommendations.

Mr. Chairman, the Pascua Yaqui Tribe decided to go into bingo business in December 1982, in order to generate additional revenues to address many pressing social, economic, and educating needs of our people.

At the present time approximately 1,016 members of our tribal employees live on our reservation in Tucson, the minority of over 500 enrolled members live in other communities throughout Arizona; however, by December 1987, we will have 300-percent increase in our reservation population, approximately 3,000 people. Since many members of the tribe will return to the reservation to live in some 400 newly built homes.

The current employment rate of our tribe is 51 percent on the reservation. In 1985 the median family income dropped to about $4,032 per year, and 85 percent of our people now live below the poverty line.

All members of the Pascua Yaqui Tribe are eager to work hard to contribute to our tribal economy and do not want to be dependent upon Federal funding alone.

For this reason our tribe decided to establish a bingo business in 1982 with the hope that badly needed revenues would be generated to help us address the many needs of our community, and at the same time to help us reduce our dependency on shrinking Federal dollars.

In my prepared statement a detail history of the Pascua Yaqui Tribe experience with five non-Indian gambling management companies during the period of December 1982, to the present is provided. Beginning with Pan American Management Co. in 1982 our tribe has had nothing but a series of problems with each successive management company.

Although most of the recent problems are current with Canadian management company, Yaqui Bingo, Ltd., are not resolved. They are, in fact, there is a great dealing of continue the same problems which are raised we sought from Federal Standards and regulations for monitoring and enforcing the laws that pertain to tribal gambling operations.

Since the committee has asked me to try to summarize my prepared statement in 5 minutes I will simply highlight the major problem that has recurred with each of the five different management companies or contractors who have managed and operate or invested in the Pascua Yaqui Bingo Hall during the period from 1982–87.

Some of the problems we encounter with these men and the companies were providing each new management agreement, only to get later violated. The following problems were experienced by the Pascua Yaqui Tribe: First, general violation of noncompliance with the tribal management contract and/or lease agreements including the specified duties of a contractor to confirm the requirements of the Yaqui Bingo ordinance, failing to comply with such provisions as: on the job training for new tribal employees, preference of hiring Pascua Yaqui Tribe members, preparation of monthly financial statement to be submitted to the tribe, and establishment and implementing of an overall personnel and employment policies.

Second, the management companies failed to fully disclose all financial investors in the management company, including in general the funders and all cooperatives officers, directors, and the employees who have day-to-day management for the responsibility of a gambling operations.

Third, the Bureau of Indian Affairs failed to provide management contracts including letters of agreement or lease agreements in a timely manner, and of equal importance, the BIA failed to provide timely and thoughtful criminal financial background checks. It should be noted that the BIA did not approve any contracts and background checks that were also conducted. The issue, however, is the timing and involvement in the completeness of those investigations.

Fourth, the management company failed to make any timely minimum compensation payments to the tribe based on the bingo profits.

Fifth, the management company failed to establish proper and standard accounting procedure to ensure that sufficient funds were available for payments of prizes, scheduled either through cash or certified funds, and that sufficient funds were available for timely payments of operating the expenses including, but not limited to wages to vendors and suppliers.

Sixth, the management company failed to submit monthly finance statements and audit reports to the tribe and denied the tribe access to the bingo money room and to all financial agreement.

Seventh, the management company failed to provide adequate security personnel and enforcement of all potential laws and regulations concerning the handling and dispensing of moneys in the bingo hall.

Eighth, the management represented engaged in potential fraud and questionable accounting practices. Bingo prizes were paid with postdated checks, postdated gift certificates, IOU's, the winners were not able to immediately collect on their winnings as required on their contract.

Bad checks were illegally issued to numerous vendors and other service providers in the Tucson area as well as to employees and maintenance supervisors.

Such activities are not only illegal but negatively reflect upon the reputation of the Pascua Yaqui Tribe. The management company were delinquent in their rent payment as well as delinquent in their monthly bingo revenue payments to the tribe.

Let me now mention very briefly the highlights of our proposed amendment to Senator McCain's bill, S. 1303, and to Congressman Udall's companion bill in the House, H.R. 2507. The Pascua Yaqui Tribe proposes amendment to S. 1303, H.R. 2507—First, the five members who will be appointed commissioners of the new Indian Gaming Commission should represent appropriate geographic and regional balance accordingly recommended that tribal members be selected from each of our four regions: the East, the Southeast, the Midwest and the Northwest and the Southwest, and that language be included in the bill or committee report instructing Secretary of the Interior to ensure that members are selected from each of the four regions reflecting appropriate geographic and regional balance.

Second, requirement for management contracts and contractors should be further strengthened under Section 13 of the bill by requiring the National Indian Gaming Commission to conduct appropriate background credit checks on all respective management company or contractors similar to the standard credit checks undertaken by the financial institutions to determine the credit worthiness of the firm. Such credit checks should be included in the information available to public source such as Dun and Bradstreet and TWR as well as more rigorous analysis conducted by expert staff of the background, financial status to be submitted by each manage contractor or company.

Third, the Gaming Commission should further protect tribes against the possibility of fraud or derision of funds by management contracts for joint venture partners by requiring certain minimum financial guarantees which would take the form of a surety or a payment bond or a bank standby letter of credit. This type of financial agreement is particularly important when a tribe does not have direct control over the management of day-to-day operations of a tribal gaming enterprise. In the case of either a minimum finance guarantee, the tribe could be designated by the management contractor as the beneficiary, and thus would have the right to draw on the letter of credit or bond if and when the management company were delinquent in its payment to the tribe pursuant to the agreed upon management contract.

The Pascua Yaqui Tribe has found out the hard way that the simple provision of requiring a financial statement of the person or entirety having a financial interest in or management responsibility for tribal gambling enterprise does not provide sufficient or necessary accurate information on the short or long-term financial soundness that is the credit-worthiness of that individual or interest.

Fourth, gambling tribes can more equitably share in the profits of gambling operations if the chairman of the gambling commission approves management contracts that not only provide for a fee based upon the percentage of net revenues of a tribe gambling activity, but also for a fee based upon the percentage of gross revenues. The fee determines if such fee is reasonable in that light of surrounding circumstances but nor even shall the fee exceed 40 percent of the net revenues.

In my prepared testimony I stated that the Pascua Yaqui Tribe did not negotiate and agreement with its current management company, nor the last three management companies, based upon the percentage of the net operative profits. The reason is that our previous management agreements, which were based on such an arrangement never allowed our tribe to recoup its percentage share of new profits as provided under each management contract.

The fact is we were always told that there was never sufficient net profit to pay for the tribe's percentage share of the agreement after all prizes and expenses had been paid.

To deal with this situation our current management contract provides that our tribe shall receive a per head fee for every person who walks in the door for the first 500 people thereafter. Our agreement establishes an escalating cost to increase the per head amount by one quarter intervals for each 100 persons and up a maximum a $3 per person for 800 or more. And addition, this system is based on a 6-month averaging of attendance. According to our calculating basis on this system our tribe would average approximately $50,000 per month. This amount was very rarely paid, as I have mentioned in my prepared statement.

Mr. Chairman, the Pascua Yaqui tribe recommends that the committee also include provisions in this amendment or in the committee report to accompany the bill that will provide the chairman of the National Indian Gambling Commission to assemble a list of management companies and contractors in the gambling business who have been approved by the gambling commissioner and hence will represent companies that comply with all provisions of this legislative. This list of gambling management companies will be available upon request to any tribe in the United States.

Mr. Chairman, I thank you very much for this opportunity to testify before your committee today in support of this important legislation.

[Prepared statement of Mr. Silvas appears in the appendix.]

[Other material is retained in Committee files.]

The CHAIRMAN. Thank you Mr. Silvas.

I would presume that the Pascua Yaqui Tribe has a lawfirm representing your legal interests?

Mr. SILVAS. Yes; we do, sir.

The CHAIRMAN. Now, after listening to all of the violations of your management contractor, my only question is: Why haven't you terminated this contract?

Mr. **Silvas**. That, sir, is a very good question, and it's come up at the moment. Let me give you just a slow little back history, sir. I, myself, have just come on board as the vice chairman for about 4 months, so I really don't have all of what I am supposed to have to present to you except on what we have presented to you.

The **Chairman**. They haven't paid your rent, they issue bad checks, they haven't paid your commission, they haven't trained your management interns—what have they done?

Mr. **Silvas**. Well, outside of giving us a bad reputation in writing bad checks and bad IOU's and not paying anybody, not really very much, sir.

The **Chairman**. But you're still going to keep them?

Mr. **Silvas**. No, sir; we have, in our prepared statement that I have submitted to you, you will see where we've sent a letter to them outlining exactly what the tribe wants now. We are asking for some kind of a security bond to be placed in any one bank where nobody could touch it, neither the bingo or my tribe, until they went into some kind of a bad debt again, then we would designate one of our persons or one of them of the bingo to sign off on the check so that we wouldn't get into this trouble again.

Right now Mr. Chairman it's really embarrassing, sir mostly because they have dragged us way down to where we had worked so hard to build our reputation of being honest people, people that were willing to work, trying to get ourselves out of our being dependent entirely on Federal moneys. This company has thrown us way back to step block No. 1 again. So that means, consequently, that now we are starting to work to rebuild our reputation so that people, when you give them a check saying Yaqui, or Pascua Yaqui check, won't look at it twice and question you all over the place.

The **Chairman**. Is this a Canadian company?

Mr. **Silvas**. Pardon?

The **Chairman**. Is this company a Canadian company?

Mr. **Silvas**. Yes; it is, sir. Well, that's where we stand with them now. They have got a letter, again, like I said, which you see up there, outlining specifically what we want first of all before we even talk to them about negotiating another——

The **Chairman**. I know what your forefatners would have done, but I won't recommend that.

Mr. **Silvas**. We still have many thoughts about it, Mr. Chairman.

The **Chairman**. Thank you very much.

Our next witness is the Honorable Wendell Chino—he's not here? Well, I know that Chairman Jourdain is here. Mr. Chairman?

STATEMENT OF ROGER JOURDAIN, CHAIRMAN, RED LAKE BAND OF CHIPPEWA INDIANS, RED LAKE, MN

Mr. **Jourdain**. Thank you Senator.

My colleague, Geronimo's great-great-grandson, is held up on a major project Les Scolero, but I told him I'll do the best we can for him.

Mr. Chairman, I am Roger A. Jourdain, chairman of the Red Lake Band of the Chippewa Indians. It is an honor and a privilege to testify before you, particularly considering your extraorinarily heavy congressional obligations. I appreciate your commitment to Indian tribes to act as our advocate and thank you for inviting me to testify on S. 555 and S. 1303, the proposed Indian gambling legislation.

My introduction: As you know, the Red Lake Band opposes the adoption by Congress of S. 555, S. 1303, or any other legislation that would impose upon Indian tribes Federal standards and regulations covering the conduct of gaming activites on Indian reservations. The Red Lake Band of Chippewa Indians has expressed its strongly-held views in the attached Resolutions 135-86, No. 70-84. These resolutions not only oppose any expansion of Federal involvement in gaming activities, but also request that if legislation is enacted over our objection, Congress include language specifically exemping the Red Lake Band of Chippewa Indians from its application.

The Red Lake Band also supports the inclusion of a provision making the appreciation of such legislation contingent upon the consent of each affected Indian tribe. Such a requirement was called for by public assembly vote at a meeting of Indian tribal representatives held in Las Vegas, NV, July 30-31, 1986. The meeting was called by the National Indian Gaming Association, that we are not a member of, to discuss pending Federal Indian gaming legislation. The association has a membership of 10 or 11 Indian tribes and does not speak for the Red Lake Band of Chippewa Indians, nor does it speak for any other tribes, approximately 390 Indian tribes.

Discussion: Indian tribes are sovereign, having possesed and exercised from time immemorial the power of self-government within the boundaries of their respective territories. Their laws have historically included the authorization and regulation of Indian and non-Indian gaming activities such as intratribal games of chance, hand games, stick games, moccasin games, and more recently, bingo. Tribally regulated gaming operations have had a positive impact upon the economy of the Indian reservations and surrounding communities.

The historical right of the tribal self-government has been consistently recognized throughout the history by the executive, the congressional, and the judicial branches of the Federal Government.

On July 8, 1970, in a message to Congress, then President Richard M. Nixon, declared the national Indian policy of "self-determination without termination." Recently, in his Indian Policy Statement of 1983, President Reagan reaffirmed the inherent sovereignty of Indian tribes and the government-to-government relationships between Indian tribes and the United States.

The sovereignty of the Indian tribes, and the importance of strengthening their governments are explicitely recognized by Congress in the "Congressional Statement of Findings" the "Congressional Declaration of Policy" set forth in the Indian Self-Determination and Education Assistance Act, 25 United States Code 450, 450A, and other significant Federal Indian legislation.

In February 1987, in *California* v. *Cabazon Band of Mission Indians,* the U.S. Supreme Court held that Indian tribes have inherent sovereignty to operate and regulate tribal bingo and card games outside the scope of State and county regulatory laws. In its opinion, the Court considered traditional notions of Indian sovereignty, the congressional goal of Indian self-government, and the need to encourage tribal self-sufficiency, and found that the State and county gaming regulation would impermissibly infringe on their tribal government.

Indian tribes have been successful in their gaming operation and regulation under tribal laws. These operations have been free from the interference of organized crime. Orderly, crime-free gaming activities continue to be conducted on the Red Lake Band's Reservation. No proof or even allegation of the actual existence of "organized crime" has been made in any of the litigation and congressional hearings on Indian gaming activities. *Cabazon,* the Supreme Court noted that at no time did California state there was any criminal or organized crime involvement in the tribal gaming enterprises.

Let me digress there just a second. If any organized crime wanted to come onto Red Lake Indian Reservation it would have to first apply for a passport to come on our aboriginal lands, so we've got full control of that. There's only one organized crime syndicate we can't deal with—they have been systematically destroying the economy of our Indian reservation and other reservations—that syndicated crime is none other than the Bureau of Indian Affairs.

For the Federal Government to impose upon Indian tribes Federal bureaucratic control over what have become successful business activities developed solely through tribal self-determination would constitute a derogatory interference with tribal self-government and a breach of faith by the Federal Government. I ask the question: why impose upon Indian tribes, without their consent, Federal bureauratic interference in business operations recently upheld by the U.S. Supreme Court and successfully regulated by Indian tribes? I ask this especially in view of the miserable track record of the Federal Government under the BIA system controlling the Indian activities and resources.

Indian tribes and their respective reservations differ in geography, reservation economies, environmental considerations, tribal government strength, land status, and their relationships with the State governments and non-Indian communities. This leads to the logical conclusion that the mandatory imposition of standardized Federal regulation of all Indian gaming activities is a mistake. If gaming legislation is enacted, we request that it include a specific exemption for the Red Lake Band. At the very least, such legislation should apply only to those tribes specifically consenting to its application.

There is ample legislative precedent for this approach. Public Law 280 excepted the Red Lake Reservation from its application of State civil and criminal jurisdiction. Applicabilty of most provisions of the Indian Reorganization Act is dependent upon tribal consent. The Indian Civil Rights Act provides that States may now assume criminal and civil jurisdiction in Indian country only with tribal consent. We have no problem with the State of Minnesota.

Both gaming bills under consideration by this committee conclude correctly that 25 United States Code, section 81, does not provide standards for approval of management contracts. These bills erroneously assume that the proposed bureaucracy, the "National Indian Gaming Commission", will be more forthcoming with regulations than its parent, the Secretary of the Interior that's under the BIA.

Since the origin of the requirements of section 81 in the 1800s, Interior has never published comprehensive, substantive regulations. On the other hand, the majority of Indian tribes using management companies have taken considerable pains to negotiate sound contracts. In any event, section 81 was never intended to address those types of agreements, nor was it intended to provide more than a technical, cursory review of contracts dealing with tribal lands.

Of course, tribes have made some mistakes in the selection and use of management companies. The right to make mistakes and to learn from them is no less a tribal and a Federal right—look at PTL. I understand that tribes are learning from and correcting those previously existing unfair contracts.

Most tribes, such as Red Lake, manage their own gaming and are capable of negotiating fair and equitable management contracts on their own. It is, therefore, unfortunate that the bills assume that appointed bureaucrats will be more competent than the tribal government to approve management contracts, tribal ordinances, and resolutions—that's a big question.

The proposed legislation also grants the Chairman of the National Indian Gaming Commission the sole authority to determine whether a gaming activity is illegal. This is a serious infringement upon the tribal sovereignty of Indian people. It usurps tribal legislative and judicial authority, and creates a barrier to tribal access to the Federal court systems and its constitutional protections. I cannot understand how a bureaucrat will be more knowledgeable and competent than an Indian tribal government and a Federal judiciary. I haven't found a competent BIA person yet, starting with Ross.

Finally, the funding of the Commission through assessments from the tribal gaming activities would, in effect, constitute a Federal, congressionally authorized income tax on Indian tribes and fly in the face of longstanding Federal policy not to tax Indian governments. Such an assessment would, in effect, tax the gross revenue of tribal business, income used solely for tribal operations, economic development, and the general welfare of the tribal members. The commission would also require substantial Congressional appropriations. Creation of a new bureaucracy is unthinkable at a time when there are insufficient funds to support existing bureaucracies. This is what that tax expert was hollering about here all morning.

This is an era of tribal management in every aspect of tribal economic and natural resources. State political interests have always fought tribes as resource managers. Look, for example, at the stormy history preceding and following the *Boldt* decision and its affirmation by the United States Supreme Court.

In my opinion, the legislation proposed here today simply attempts to hide political concerns behind expressions or concern for tribes. These bills erroneously declare that the establishment of Federal standards and National Indian Game Commissions are necessary to meet congressional concern about gaming and protect tribes.

I ask you, Mr. Chairman, and members of your committee, to look behind the terminology of "congressional concern" to see if it does not, in fact, refer to political concern about the State, the local constituents' unfounded fear of crime and big gaming interests' fear of competition.

Thank you, Mr. Chairman, and members of the committee, for your time and consideration.

I will be happy to answer any questions you may have.

One last point I want to make on this: we've had enough regulations—Federal regulations—for all the Indian reservations. We don't need any more. You're going to have to build another Library of Congress to accommodate all the bureaucratic rules and regulations governing the Indian tribes of this country. We've had enough of those. I'm sick and tired of fighting every day the Bureau of Indian Affairs, trying to reason with them, and he says, "We'll talk to the Commissioner." I know damn well talking to the Commissioner you might as well ask that flyer that landed in Moscow Square, you may get better reasoning.

But this is a fact of life. We have been tied down with rules and regulations, and as an end result the Bureau of Indian Affairs and the Department of the Interior have left all the Indian reservations in economic shambles.

You point at them and say, "When are you going to provide a job? Tomorrow or the day after?" "Not my job." All they're concerned about is protecting their turf, these bureaucrats that administer rules and regulations. They even defy court orders. They have done that in Minneapolis courts—just 1983, they ruled against them to release all the money to the Red Lake Band they have never paid for the operation of the saw mill. The saw miss is an example—1916, Congress put a rider in the appropriations bills authorizing Secretary of the Interior to administer our forests, manage our forests, manage our saw mill or he'd do it with out tribe's representative. All they have done is mismanage our forest. All we got is a bunch of stumps left. That's all we got. There's a saw mill sitting there that's been deteriorating for the last three years. Those bureaucrats don't have any pride whatsoever. When quarter to five comes they slow up and run away from their job.

The CHAIRMAN. Thank you very much.

Mr. JOURDAIN. I don't want to take up any more time because if I get on that subject I might get carried away. But I just have to point out that 1916 Forestry Act as an example of legislation.

The CHAIRMAN. We shall look into that, sir.

Mr. JOURDAIN. Thank you.

[Prepared statement of Mr. Jourdain appears in the appendix.]

The CHAIRMAN. Chairperson Garcia has been waiting for some time.

Ms. Garcia, please.

STATEMENT OF NORA GARCIA, CHAIRPERSON, FORT MOJAVE INDIAN TRIBE OF ARIZONA, CALIFORNIA, AND NEVADA, NEEDLES, CA

Ms. Garcia. Mr. Chairman and members of the committee, my name is Nora Garcia. I am the chairperson of the Fort Mojave Indian Tribe of Arizona, California, and Nevada. On behalf of the Fort Mojave Indian Tribe, I would like to deliver this testimony concerning the proposed Indian Gaming Regulatory Act.

There are currently four versions of the act in Congress. The tribe supports Chairman Inouye's bill, S. 555, with two caveats. First, with respect to the regulation of class III gaming, there is a need for a provision which would authorize the tribe, with the consent of the Secretary, to conduct class III gaming within Nevada under the jurisdiction of the National Indian Gaming Commission, in case the tribe and the State of Nevada are unable to reasonably agree upon the terms and conditions of a jurisdictional transfer.

Second, in order to comport with the special concerns expressed by Nevada in its regulation of casino-type gaming, provision must be made allowing for a redefinition of class III gaming to include, for purposes of Nevada only, both class II and class III gaming. The Fort Mojave Tribe recommends that these provisions be added to S. 555. A more detailed discussion of the tribe's recommendation in this respect is set forth below.

Section 11(d)(2) of S. 555 authorizes class III gaming in States where such gaming is legal, provided that the tribe transfers certain criminal and civil jurisdiction over such gaming to the State. The Fort Mojave Tribe supports such a provision. The tribe recognizes that many difficulties which would arise in regulating casino-type gaming, not the least of which is the susceptibility of such gaming to corrupt influences.

The tribe also recognizes the importance of fair and honest gaming to the continued success of the gaming enterprise. A cession of regulatory jurisdiction over casino-type gaming to Nevada, a State which has in place the system and experience necessary to successfully regulate casino-type gaming, would benefit the tribe.

Nor would a provision of this kind impair or undercut tribal sovereignty through a direct application of State law to Indian country, since the State would have no jurisdiction without the tribe's consent, and unless the tribe essentially invited the State onto the reservation. The tribe's voluntary cession of certain jurisdiction to the State is perfectly consistent with its sovereign authority over its territory.

Present Federal law makes it unlawful to manufacture, recondition, repair, sell, transport, possess, or use any gambling device within Indian country, 15 United States Code, section 1175. As a result, although casino-type gaming is legal in Nevada, it is illegal in the Nevada portion of the Fort Mojave Indian Reservation. Because of section 1175, the Fort Mojave Tribe has been placed at a disadvantage by being unable to compete with Nevada's casinos, and has therefore lost an important means by which to promote economic development and self-sufficiency on the reservation. S. 555 would reverse this result and allow the tribe to conduce class III gaming on an even par with the State. The Fort Mojave Tribe, therefore, fully supports this aspect of the legislation, and the provision of S. 555 modifying section 1175.

However, as I mentioned by way of introduction in this statement, the one aspect of S. 555 which troubles the tribe is the absence of an alternative for the Fort Mojave Tribe to conduct class III gaming if Nevada unreasonably refuses to agree to a jurisdictional transfer.

In such a case, the provisions of S. 555 pertaining to class III gaming become meaningless, and the tribe is back to square on, prohibited by 15 U.S.C. 11, section 1175, from conducting casino-type gaming on the Nevada portion of the reservation. In order to prevent this result, there must be a safety valve provision put in section 11(d)(2) of S. 555, which would allow the tribe to conduce class III gaming under the supervision of the National Indian Gaming Commission in case the Tribe and Nevada cannot agree upon the terms of a jurisdictional transfer.

Additionally, in order to insure good faith dealing on the part of both Nevada and the tribes, provision should be made which conditions the transfer of Class III gaming to the commission upon the Secretary's determination that Nevada's refusal to take jurisdiction was unreasonable. In other words, if after negotiations between the tribe and the State, the Secretary determines that the State's acceptance of jurisdiction was unreasonably withheld, the Secretary would authorize the Commission to take jurisdiction of class III gaming.

Such an addition would preserve the substantive benefits of section 11(d)(2), and at the same time would also ensure the adequate supervision and regulation of casino-type gaming, substituting the National Gaming Commission for the State of Nevada as the regulatory entity.

In anticipation of the passage of S. 555, and in an effort to gain Nevada's support of the bill, the Fort Mojave Tribe is currently negotiating an intergovernmental agreement with Nevada. The intergovernmental agreement will provide for the jurisdictional transfer of the type contemplated and authorized by section 11(d)(2) of S. 555. That is, the consent of the Secretary, the tribe will voluntarily transfer all civil and criminal jurisidiction over casino-type gaming, except for taxing authority, to Nevada, subject to the terms and conditions of the intergovernmental agreement.

During the course of our negotiations, the State of Nevada has indicated that it would be impractical for Nevada to regulate class III gaming, while at the same time other games within class II gaming would be regulated by the National Indian Gaming Commission.

Thus, under the current version of S. 555 one would have casino blackjack and poker regulated by the commission, while the other class III games would be regulated by Nevada. Nevada has indicated its unwillingness to regulate under such a dual scheme. This would be an impediment to a jurisdictional transfer.

The tribe, therefore, suggests a provision in S. 555 which would authorize a jurisdictional transfer over all casino-type gaming, including bingo and card games as suggested by Nevada. It is the tribe's understanding that Nevada would define only two classes of gaming. Class I would be traditional gaming under the exclusive jurisdiction of the tribes, and class II gaming which would include all other gaming.

Because of the unique concerns of the State of Nevada with regard to a unitary regulatory system for all games authorized by law, the Fort Mojave Tribe would recommend that for purposes of the Nevada Indian Tribes, gaming be defined as proposed by the State of Nevada. In that Nevada is the only State in which casino-type gaming is authorized that also has Indian reservations within its boundaries, the tribe feels compelled to support Nevada's definitions, but would limit the two-tiered definitions to the State of Nevada only. To apply Nevada's definitions to all tribes throughout Indian country would be a grave injustice to Indian tribes and a major affront on tribal sovereignty.

With the implementation of the above suggestions, the Fort Mojave Tribe lends its full support to S. 555.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

[Prepared statement of Ms. Garcia appears in the appendix.]

The CHAIRMAN. Earlier this morning Secretary Swimmer suggested that before an Indian tribe or nation considers gaming activities on its lands that a referendum be conducted by the members of the tribe. How do you feel about a referendum?

Ms. GARCIA. Like you mentioned earlier, I too, have my own personal feelings regarding gaming on the reservation because of my religious personal beliefs, and I would allow that. I think it's one way of the people themselves telling you what they want on the reservation and I think it's another form or way of gaining their trust in what you do decide for them. It's going to be something that's going to be long term which will affect them years down the road, and I think they should be involved in that decision totally.

Ms. TURNIPSEED. Yes. Ye've already asked our tribal membership whether they do or do not want bingo. We've already been through that process.

Mr. SILVAS. Same deal here, judge—I keep calling you "judge"—I'm sorry, sir, I mean "chairperson."

The CHAIRMAN. Are you in favor of having the members of your tribe vote on the issue of gaming?

Mr. SILVAS. Yes, sir; we always, these councils, they represent all the tribe. They always have to come up with the answers before and they do vote on things before they do bring it to the chamber. So anything that the Yaqui Tribe does is done as a unit, as a whole, being voted on and everything.

The CHAIRMAN. And Chairman Jourdain is against any one of the bills, so it makes no difference here.

Mr. JOURDAIN. We don't need any referendum. We have a referendum every election by the people. We are directed to get things done.

Let me point out one bad experience about a referendum. According to our constitution and bylaws we have a referendum. It said in there that it was not subject to approval or review of the Secretary of the Interior, and it says that the vote shall be final. And it says we will only take that only under advisory. They overruled the constitution bylaws, Secretary of the Interior and the Assistant Secretary. They don't care about that. That's just another smokescreen.

The **Chairman**. Should there be any size limitations on the definition of tribes? Under the measures considered, in the definition of tribes as long as the members are recognized and certified by the Department of the Interior they qualify. But we have been told that there are tribes with less than 10 adult members. Should they be able to carry on gaming activities?

Ms. **Turnipseed**. Well, I believe that if you have Indian blood in you, you have to keep your identity, you have to keep your heritage alive, whether there is 5, 55, or 550, you know, you are an Indian. We have our sovereignty, something that we all strive for.

The **Chairman**. Is that the way you feel, too?

Ms. **Garcia**. I feel the same way. I think no matter what size tribe you have—its a little easier to manage, anyway, if they're that small—yet I think these regulations would help protect those tribes also in case, you know, like you were talking about earlier about how small they were and that they would have the financial capability you know, to get this type of regulation going. I think initially anybody who is proposed by an outside entity, they usually come to the forefront of some sort of financial capability for the tribe to address these certain issues.

The **Chairman**. I thank all of you. If you have further statements you'd like to submit, the record will be kept open until July 15.

Thank you very much.

Ms. **Garcia**. Thank you.

Ms. **Turnipseed**. Thank you.

Ms. **Hargrove**. Thank you.

Mr. **Silvas**. Thank you.

Mr. **Jourdain**. Thank you.

The **Chairman**. Our final witness is the Rev. Msgr. Joseph Dunne, president of the National Council on Compulsive Gambling of New York City.

Monsignor, welcome sir.

STATEMENT OF REV. MSGR. JOSEPH A. DUNNE, PRESIDENT, THE NATIONAL COUNCIL ON COMPULSIVE GAMBLING, INC.

Monsignor **Dunne**. I want to thank you, Mr. Chairman, for giving me the opportunity to testify at this long and interesting day.

I'm here, Senator, to talk for the victims of gambling in our country, and the legislation under discussion. My background is that I was a military chaplain in World War II and Korea, and subsequently wounded and retired, but became chaplain of the New York City Police Department, and during my 23 years in law enforcement I designed and directed the program of rehabilitation for police officers, particularly in alcoholism and other problems. We recovered 2,000 police officers from alcoholism during my tenure. Presently I'm manager and professor at John J. College. I am the executive director of the Institute of Alcohol and Substance Abuse and Gambling Behavior, and the president of the National Council on Compulsive Gambling.

The National Council on Compulsive Gambling, sir, is a nonprofit organization founded in New York City in 1972 and incorporated in 1975. The people at Gamblers Anonymous came to me and asked me to do what they couldn't do because of their anonymity, and the council presently has 11 affiliates around the country and in Canada. Its purpose is dissemination information, education on compulsive gambling as a treatable illness. This illness has been recognized by the American Psychiatric Association in the Diagnostic Statistical Manual of Mental Disorders, Number 3, it's designated 312.31 under the heading of "pathological gambling," a brief description of which is: complusive gambling is a progressive behavior disorder with the individual as a psychology uncontrollable preoccupation and urge to gamble. This results in excessive gambling, the outcome of which is a loss of time and money.

The gambling reaches a point in which it compromises, disrupts, and destroys the gambler's personal life, family relationship, or occasional pursuits. These problems in turn lead to the intensification of gambling behavior. The causal features are emotional dependence on gambling, a loss of control, and interference with normal functioning. This evidence is supplied to the committee in many of the documents I have submitted for your convenience.

So the National Council does not oppose gambling; we recognize the peoples' right to gamble. In 1976 the Commission on the Review of National Policy Toward Gambling concluded that 68 percent of our adult Americans gamble—that there were 1.3 million compulsive gamblers at that time, and the incidence of compulsive gambling is directly related to the increased availability of gambling; therefore, the National Council views legislation increasing Indian gaming as loaded with dangers to native Americans and also the surrounding community as proposed in H.R. 964 and H.R. 2507 and their accompanying Senate bills.

Current research conducted under the auspices of the National Council reveals that in those States which have legalized gambling, up to 2 percent of the adult population who gamble will become compulsive gamblers. In New York State alone this would be 250,000 people, nationally it would be 6 million people in trouble with gambling.

State lotteries, which have been glorified as a form of painless taxation and a new source of income for education and funding for the elderly, represent a real threat, then, to our national health and welfare in that this policy places the State in the gambling business. Unlike alcohol legislation where the State merely legalizes the sale of alcoholic beverages, here the State promotes gambling, a form or risk-taking behavior which is addictive, and it creates victims of public policy.

This committee must be aware of the fact that to date only seven States out of 20 who have legalized a form of gambling have recognized the inherent danger and provided money for public education and prevention programs. Those States are Maryland, Delaware, New York, Connecticut, Massachusetts, and Iowa. These States have at least recognized their responsibility for passing gaming legislation and done something to provide money either from tax levy moneys, some States tax the missions at racing and gaming tracks, and other States like Iowa take one-half of 1 percent of the lottery as a form of moneys for treatment.

But none of the proposed legislation on Indian gaming mentions responsibility of the Federal Government or Indian authorities for the provision of adequate treatment for addicted native Americans or other participants in gaming in this proposed legislation.

So after 25 years experience and training in the field of addiction and serving as a member of the Block Grant Advisory Council of the State of New York for Mental Health Division of Substance Abuse and the Division of Alcoholism, I can assure the committee that the proposed legislation will seriously impair first of all native Americans, residents on the reservation, who already combat the problem of poverty and alcohol and drug addiction, and can easily be lured into the fantasy of the "big win" as a solution for their live's problems.

Second, those States who have refused to enact gambling legislation and those communities who already have enacted State controlled gaming activities cannot compete with the large scale gambling opportunities currently being offered on reservations.

Therefore, my reaction to your proposed legislation, with the exception of the one drafted by the Department of Justice and the Department of Interior, would be one of opposition on the grounds it lacks legal control, a failure to fulfill strict requirements necessary for all gaming operations and failure to provide money for rehabilitation.

We review the huge detailed efforts on the part of the Attorney General of the State of New Jersey to investigate and monitor the casino industry in Atlantic City, then we can appreciate the difficulty envisioned by the proposed legislation on Indian Reservations.

The members of this committee therefore are requested to look to adequate safeguards including treatment, and Gamblers Anonymous meetings, in view of the incidence of compulsive gambling in America today. Problem gamblers are controlled by the fantasy of the "big win"—the loss of money, borrowing, then stealing and embezzlement—this is accompanied by guilt feelings, frustration, but a need to be in action at all times, causing further family loss, separation, divorce and a high percentage at attempts at suicide. The need, therefore, is for intervention, education, and treatment.

Today thousands of compulsive gamblers languish in jail because as a nation we have not recognized complusive gambling as a treatable illness and have legalized a form of recreation which is licit for the majority, but it's a horror for its victims.

[Prepared statement of Monsignor Dunne appears in the appendix.]

The CHAIRMAN. Monsignor, I thank you very much for your opening statement. Are you suggesting that we put a provision into these bills which would call for the setaside of funds for this educational program?

Monsignor DUNNE. Yes, Mr. Chairman, I'm totally against any legislation today that doesn't recognize the fact that gambling is addictive to our citizens, whether its State legislation or Federal legislation, and that would include the Indian reservation because we see that passing gambling legislation always, always, brings in greater availability, and the availability is inherent in the contract, say, for a lottery or for off-track betting, or for pari-mutuel betting because it includes in the contract promotion of gambling, marketing" it's called. What does marketing mean here? It means drawing more people into gambling. Out of every 100 people that go in, 2 of them, at least, are going to become compulsive gamblers and we will see them in court. We will see them embezzling, we will see them stealing and totally out of control.

Of course, for every compulsive gambler there are 15 people who also are going to suffer—the members of the family, the business, and so forth. So I would recommend that for every time we pass legislation increasing the availability of authorized gambling, that there be a provision as there are in these six States, right in the State law, they recognize gambling as addictive based upon the American Psychiatric Association diagnosis, and then we create a council in that State in order to monitor that legislation and be an advisory group to it and see to it that this money goes to the Office of Mental Health and then is distributed to public education functions such as our council, training of medical people who don't know the first thing about compulsive gambling.

We labored long in the field of alcoholism to get doctors and psychiatrists, psychologist, nurses, social workers, aware of alcohol as a problem. Today we have to do the same thing with gambling. Out of all the health facilities in New York City, only 4 percent in their intake ask whether or not the problem of the family's conflict, lack of money, funds, threatened divorce, was in any way connected with gambling—only 4 percent asked, and yet it's a high incidence. I can quote all kinds of statistics to you how gambling is related to family breakup, violence, even in our adolescent population. Why should a child study hard in high school and college when with a little luck you can win $7 million in a State lottery or take a trip to Atlantic City and get involved with the casinos.

The casinos are a fascination for our youth, particularly in Jersey. In New Jersey today better than 50 percent of the high school students we measured were already at the casinos on a weekly basis with their parents gambling. We see students being arrested selling drugs to pay for their gambling habit. We see young people involved with book makers and shylocks, borrowing money to gamble.

So this has got to be added to the legislation and face reality that gambling is addictive. It's here to stay, and we're having serious problems with it.

The CHAIRMAN. Monsignor, once again I thank you very much for waiting all these hours to assist us this afternoon.

With this the hearing will come to adjournment, but the record will be kept until the 15th of July so if any of you would like to submit additional statements, feel free to do so.

[Whereupon, at 5:25 p.m., the committee was adjourned.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF SENATOR CHIC HECHT

LAW ENFORCEMENT, NOT INDIAN SOVEREIGNTY, IS KEY TO LEGAL WAGERING ON INDIAN LANDS

Proposed Federal gambling legislation, erroneously tagged an "Indian Rights issue," would, if passed, open the door to crime and corruption on Indian lands.

More and more Indian tribes are turning to legal wagering--currently high-stakes bingo and cards--as a way of raising revenues. On the horizon are the more complex forms of wagering--dog and horse racing, jai alai and casino gaming. Past experience with these forms of legal wagering has shown that stringent governmental regulation is necessary to keep the activities legal and fair. And the states that now have legal gaming were able to develop that regulatory expertise only after many long and sometimes discouraging years.

Nonetheless, two identical measures (S. 1303 and H.R. 2507) recently introduced on Capitol Hill take a "hands off" approach to regulating the recent upsurge in legal gaming on reservations. Under the rubric of Indian sovereignty, the proposals put substantially all regulatory control in the hands of the Indian tribes themselves.

There is no question that American Indians have a strong interest in legislation that affects them. They would not, however, be the only entities touched by the regulatory proposals. However, the states have an equally strong interest in controlling crime and corruption within their borders and in seeing that their citizens and citizens from other states, who would make up the vast majority of consumers of the gaming activities on Indian lands, are treated fairly in all commercial activities.

The approach taken by S. 1303 and H.R. 2507 ignores that fact that the tribes have neither the experience, expertise, money or time to develop an adequate regulatory system. It also ignores the fact that most wagering patrons and game operators will not be Indians, but rather citizens of the states in which the reservations are located or visitors to those states.

Rather than assuming that Indian sovereignty is the issue, the Congress must balance the legitimate rights of the Indians and the sovereign and law enforcement interests of the states.

As the states have learned only by painful experience, the more complex forms of legal wagering--such as parimutuels and casinos--are easily corrupted and require constant vigilance by trained and experienced regulators to ensure that the activities are legally and fairly operated and that criminal elements do not gain control.

S. 1303 and H.R. 2507, in allowing self-regulation, fail to separate the regulated activity and the regulators. Moreover, their expansive provisions allow the tribes to offer a given form of wagering so long as any other person or entity in the surrounding state may do so; this means that a "Casino Night" operated by a church charity in a given state would trigger the right to operate full-fledged casinos in tribal territory. Like other proposals regarding gaming on Indian lands, S. 1303 and H.R. 2507 divide legal gaming into classes according to complexity (and hence potential for corruption). These two measures, however, allow Indian regulation of all gaming classes, with only minor oversight from a Federal commission for the most complex forms.

The eagerness of the Indian tribes to engage in an obviously profitable activity is understandable. However, unscrupulous promoters who promise quick riches may prove overwhelmingly seductive. Without an effective regulatory scheme in place, the tribes face the specter of corrupt gaming operations--and corruption in the support industries connected with those activities. Such an outcome would have a profound impact on reservation life, on the states within which the reservations lie and on the patrons of the gaming activities.

By requiring the Indians themselves to police parimutuel and casino activities on their lands, S. 1303 and H.R. 2507 place a tremendous burden on the already severely strained monetary and manpower resources of the Indians. Yet, without immediate and effective regulation, the wagering operations will inevitably draw unsavory elements and crime to the reservations, thus dooming the original purpose behind the games: raising revenues for the tribes.

The operation of legal gaming to provide tribal income is a relatively new phenomenon on Indian reservations. To date, the tribes offer high-stakes bingo and a few card games. But the rush appears to be on to operate the more complex forms of legal wagering. This past February, the Supreme Court, in Cabazon Band of Mission Indians, ruled that without Congressional authorization, the states generally may not regulate gaming on Indian lands. For some, this has been a green light to forge ahead with all types of gaming. For others, the decision has clarified the need for a Federal position regarding the regulation of legal gaming on Indian reservations.

On Capitol Hill the question has become, who will regulate the activity?

Those states that allow legal wagering already have time-tested regulatory policies, programs and personnel. Bringing the more complex types of wagering on Indian lands under the protection of state regulation would allow the tribes to share in the hard-won respectability state-regulated gaming activities have achieved. Those who seek to cross over into tribal territory to escape strict state scrutiny of their wagering activities and operations would have no place to hide: all legal wagering within a state would be treated exactly the same. Moreover, the use of State law enforcement agencies to regulate gaming wherever located within the state is the most efficient allocation of taxpayers' money.

S. 1303 and H.R. 2507, along with several other gaming regulation measures, are now before the House and Senate committees dealing with Indian affairs, where hearings are scheduled for later this month. It is clear that Congress must enact legislation on this important issue. S. 555 and H.R. 964, which place regulation of the complex forms of gaming with the states, are preferable alternatives to S. 1303 and H.R. 2507.

Regulation of legal gaming on Indian lands is not an Indian rights issue. It is, quite simply, a law enforcement issue. And it is the states that are in the best position to regulate legal wagering within their borders.

IMPACT OF INDIAN RESERVATION GAMBLING ON STATE REVENUES

The rapid increase in the number of Indian tribes turning to commercial gambling as a source of tribal revenues has important implications for the States and for State-authorized gambling enterprises. In particular, the 32 States that have Indian lands within their borders can anticipate severe negative impacts on legal gambling revenues as a result of reservation gaming.

Most States now have one or more forms of legal gambling; bingo and charitable gaming predominate. In 1985, legal gambling contributed more than $15 billion in direct revenues to State economies. The monies were used to pay Federal, State, and local taxes; to defray the housing and utility costs of the elderly; to supplement the budgets of public school systems; to support publicly funded arts programs; to fund charitable and religious organizations; and to pay gambling industry costs and profits. States also receive additional direct revenues from gambling in the form of licensing fees, admission taxes, and gambling business and property taxes.

Recent Supreme Court decisions have reaffirmed tribal jurisdiction over gambling on reservations unless Congress authorizes State regulation. Absent such Congressional action, gambling on reservations is likely to develop in an uncontrolled fashion, creating an increasingly competitive environment for limited consumer dollars.

For the 32 reservation States as a group, the probable revenue loss from uncontrolled gambling on reservations ranges from a low of $192 million to a maximum of $850 million.

--State-authorized bingo would suffer revenue losses ranging from $89 million to $199 million.

--Revenues from charitable games other than bingo ("Las Vegas Nights," pull-tabs, etc.) would decline by $27 million to $74 million.

--Parimutuel horseracing would lose at least $8 million and possibly as much as $127 million.

--Greyhound racing revenues would be reduced by at least $4 million up to $44 million.

--Jai-alai would lose revenues ranging from $0.4 million to $3 million.

--Revenues from State lotteries would be reduced by at least $28 million and potentially by as much as $123 million.

UNITED STATES
IMPACT OF INDIAN RESERVATION GAMBLING
ON ALL AREAS EXCEPT CASINOS AND LEGAL BOOKMAKING

Negative Impact of Indian Reservation Gambling -
Revenue Losses Under Four Alternative Scenarios

			Scenario I Bingo Only		Scenario II Bingo and Greyhounds		Scenario III Bingo and Gaming Devices		Scenario IV Bingo and Casinos	
Adult Population:	178,158,300									
Personal Income (000):	$3,206,597,000									
Number of Tribes:	521									
	1985 Gross Wagering (000)	1985 Gross Revenues (000)	Minimum (000)	Maximum (000)	Minimum (000)	Maximum (000)	Minimum (000)	Maximum (000)	Minimum (000)	Maximum (000)
PARI-MUTUELS										
Horses	$12,240,249	$2,390,148	0.3%	0.6%	1.8%	5.3%	0.8%	1.7%	1.1%	2.3%
Greyhounds	$2,703,358	$527,133	0.7%	1.4%	4.7%	8.3%	1.2%	2.5%	1.4%	3.4%
Jai-alai	$663,968	$129,385	0.3%	0.5%	1.0%	2.0%	0.4%	1.1%	0.6%	1.7%
Total Pari-mutuels	$15,607,575	$3,046,665	0.4%	0.8%	2.2%	5.7%	0.8%	1.8%	1.1%	2.5%
LOTTERIES (1986)										
Numbers	$4,410,090	$2,249,146	0.1%	0.2%	0.2%	0.4%	0.2%	0.4%	0.3%	0.6%
Instant	$3,401,630	$1,734,831	0.9%	1.6%	1.3%	2.5%	1.7%	3.0%	2.3%	4.1%
Lotto	$4,388,540	$2,238,155	0.4%	0.7%	0.6%	1.2%	0.8%	1.3%	1.0%	1.8%
Total Lottery	$12,200,260	$6,222,133	0.4%	0.7%	0.7%	1.3%	0.8%	1.5%	1.1%	2.0%
BINGO	$3,437,989	$910,036	9.7%	17.2%	11.0%	20.0%	11.0%	20.3%	11.6%	21.9%
CHARITABLE GAMES	$1,681,680	$525,189	5.1%	9.6%	6.1%	12.2%	6.2%	12.6%	6.8%	14.1%
TOTAL LEGAL GAMING	$32,927,503	$10,704,022								
Revenues/Personal Income		0.334%								
Total Negative Impact ($)			$155,734	$277,050	$240,915	$498,250	$209,591	$396,300	$244,702	$472,165
Total Negative Impact (%)			1.5%	2.6%	2.3%	4.7%	2.0%	3.7%	2.3%	4.4%

UNITED STATES
IMPACT OF INDIAN RESERVATION GAMBLING
ON ALL AREAS EXCEPT CASINOS AND LEGAL BOOKMAKING

Adult Population: 178,158,300
Personal Income (000): $3,206,597,000
Number of Tribes: 521

Negative Impact of Indian Reservation Gambling -
Revenue Losses Under Four Alternative Scenarios

	1985 Gross Wagering (000)	1985 Gross Revenues (000)	Scenario I Bingo Only		Scenario II Bingo and Greyhounds		Scenario III Bingo and Gaming Devices		Scenario IV Bingo and Casinos	
			Minimum (000)	Maximum (000)	Minimum (000)	Maximum (000)	Minimum (000)	Maximum (000)	Minimum (000)	Maximum (000)
PARI-MUTUELS										
Horses	$12,240,249	$2,390,148	$8,170	$15,000	$42,000	$126,750	$19,137	$39,700	$26,183	$55,730
Greyhounds	$2,703,358	$527,133	$3,738	$7,300	$24,540	$43,500	$6,175	$13,400	$7,631	$17,910
Jai-alai	$663,968	$129,385	$350	$600	$1,350	$2,600	$536	$1,400	$714	$2,150
Total Pari-mutuels	$15,607,575	$3,046,665	$12,258	$22,900	$67,890	$172,850	$25,848	$54,500	$34,528	$75,790
LOTTERIES (1986)										
Numbers	$4,410,090	$2,249,146	$2,453	$4,000	$4,428	$9,025	$4,373	$8,900	$5,839	$12,600
Instant	$3,401,630	$1,734,831	$15,952	$27,050	$22,624	$43,425	$29,872	$51,850	$40,279	$70,310
Lotto	$4,388,540	$2,238,155	$9,587	$15,600	$13,950	$27,125	$17,381	$30,100	$22,408	$40,130
Total Lottery	$12,200,260	$6,222,133	$27,992	$46,650	$41,002	$79,575	$51,626	$90,850	$68,526	$123,040
BINGO	$3,437,989	$910,036	$88,694	$156,850	$99,901	$181,850	$99,757	$184,850	$105,910	$199,210
CHARITABLE GAMES	$1,681,680	$525,189	$26,790	$50,650	$32,122	$63,975	$32,360	$66,100	$35,738	$74,125
TOTAL LEGAL GAMING	$32,927,503	$10,704,022								
Revenues/Personal Income		0.334%								
Total Negative Impact ($)			$155,734	$277,050	$240,915	$498,250	$209,591	$396,300	$244,702	$472,165
Total Negative Impact (%)			1.5%	2.6%	2.3%	4.7%	2.0%	3.7%	2.3%	4.4%

PREPARED STATEMENT OF HON. BARBARA F. VUCANOVICH

THANK YOU, MR. CHAIRMAN, FOR HOLDING THESE HEARINGS ON S. 555 AND S. 1303, WHICH WOULD PROVIDE GAMING ACTIVITIES ON INDIAN RESERVATIONS. AS YOU KNOW NEVADA IS A UNIQUE STATE WHERE THIS ISSUE IS CONCERNED. GAMING IS NEVADA'S NUMBER ONE INDUSTRY AND A MAJOR CONTRIBUTOR TO OUR ECONOMY. NEVADA ALSO HAS SEVERAL INDIAN RESERVATIONS WHICH SHOULD HAVE THE OPPORTUNITY TO IMPROVE THEIR ECONOMY THROUGH GAMING ACTIVITIES. HOWEVER, I BELIEVE ANY GAMING ON INDIAN LANDS SHOULD BE STRICTLY LICENSED AND REGULATED BY THE STATE.

IT IS IMPORTANT THAT WE BALANCE THE LEGITIMATE INTERESTS OF THE INDIAN TRIBES WITH THE STATES' NEED TO REGULATE GAMING ACTIVITIES. THE ISSUE BEFORE THE COMMITTEE IS NOT "INDIAN GAMING" BUT "GAMING ON INDIAN LANDS". MOST OF THE PATRONS WILL BE NON-INDIANS AND MOST OF THE OPERATORS WILL ALSO LIKELY BE NON-NATIVE AMERICANS. THIS FACT CREATES LEGITIMATE QUESTIONS FROM THE STATES AND LAW ENFORCEMENT OFFICIALS ABOUT POTENTIAL CORRUPTION AND CRIMINAL ELEMENTS. WE MUST BE ASSURED THAT THESE GAMING ACTIVITIES ARE LEGALLY AND FAIRLY RUN. STATES HAVE A STRONG INTEREST IN FIGHTING CRIME AND CORRUPTION WITHIN THEIR BORDERS. NON-INDIANS SHOULD NOT BE ABLE TO ESCAPE FROM STATE GAMING REGULATIONS JUST BECAUSE THEY STEP ACROSS THE BOUNDARY ONTO A RESERVATION.

I FEEL THAT IT IS EXTREMELY IMPORTANT THAT STATES SUPERVISE CLASS III GAMING WHICH INCLUDES HORSE RACING, DOG RACING, CASINO GAMING AND SLOT MACHINES, AMONG OTHERS. THESE GAMES ARE VERY COMPLEX AND INVITE CORRUPTION AND TAMPERING WITHOUT OVERSIGHT BY EXPERIENCED REGULATORS. THERE IS SIMPLY TOO MUCH MONEY INVOLVED IN CLASS III GAMES TO BELIEVE

THAT EVIL INFLUENCES WOULD NOT TRY TO ENTER THE RESERVATIONS. STATES WITH GAMING, ESPECIALLY NEVADA, HAVE THE NECESSARY REGULATORY PROCEDURES IN PLACE, DERIVED THROUGH YEARS OF TRIAL AND ERROR AND EXPERIMENTATION WITH DIFFERENT METHODS. ON THE OTHER HAND, THE INDIANS AND THE GOVERNMENT COMMISSION THAT WOULD BE ESTABLISHED THROUGH THESE BILLS SIMPLY CAN NOT MATCH THIS EXPERTISE, THAT CAN ONLY BE ACQUIRED THROUGH YEARS OF EXPERIENCE.

THE STATES ALSO HAVE THE RESPONSIBILITY TO PROTECT THEIR CITIZENS FROM ANY FRAUD OR ABUSE BY THOSE OPERATING THE GAMES AND FROM THE CRIMINAL ELEMENTS THAT MAY ATTEMPT TO CONTROL THOSE GAMES RUN ON RESERVATIONS. THE CITIZENS DESERVE THE SAME PROTECTION WITH REGARD TO GAMING WHETHER THEY ARE ON AN INDIAN RESERVATION OR OFF A RESERVATION. THIS SIMPLY PROVIDES UNIFORM PROTECTION UNDER THE LAW AND IS THE RIGHT OF THE CITIZENS OF THE PARTICULAR STATE. IN ADDITION, IT IS IMPERATIVE THAT WE MAINTAIN THE INTEGRITY OF THE GAMING INDUSTRY BY NOT ENCOURAGING PREFERENTIAL TREATMENT FOR ONE GROUP OF GAMING OPERATORS OVER ANOTHER GROUP.

IT IS MY HOPE THAT NEVADA'S CONCERNS WILL BE LOOKED AT CAREFULLY BY THE COMMITTEE WHEN CONSIDERING THIS LEGISLATION. NEITHER THE STATE NOR I OPPOSE GAMING ON INDIAN RESERVATIONS AS LONG AS THE STATE CAN REGULATE AND ENFORCE THE ACTIVITIES. THE FACT IS, THE TRIBES DO NOT NEED TO AVOID STATE REGULATION TO MAKE MONEY. IN FACT, THEY WILL BE BETTER OFF BECAUSE STATE REGULATION IS IN THEIR BEST INTEREST BECAUSE IT SEEKS TO PREVENT GRAFT, CRIME AND CORRUPTION.

PREPARED STATEMENT OF HON. HARRY REID

Mr. Chairman, thank you for the opportunity to testify here today. I consider this issue to be of utmost importance both to the future of my State's most important industry, the integrity of the United States, and to the well-being, honor and safety of those who occupy Indian lands.

I am here to argue for State regulation of gaming on all lands within a State, and against any exception to that rule. I approach the question with a somewhat unique perspective, since I served as Chairman of the Nevada Gaming Commission for over four years. The Commission is the ultimate policy maker for Nevada gaming.

Based on that personal experience, I am convinced that regulation of gaming operations is, at best, an extremely complex, expensive, and arduous task. Even in a small State like Nevada, it requires committment of literally millions of dollars and many hundreds of employees, including investigators, surveillance personnel, accountants, and attorneys, as well as a large and well-trained clerical staff.

Without those resources, effective regulation is not only difficult, it is impossible. Lack of that effective regulation is an open invitation to organized crime to move into a lucrative area where the commodity is cash, and corruption reaps tremendous profits. Without adequate protection, not only the operator and the taxing and regulating authorities suffer; the consumer is also denied a fair opportunity to win, and games of chance become games without a chance for winning.

In Nevada, for over fifty years we have repeatedly experienced the heavy baggage borne by those who assume the duty to regulate gaming. We have seen mobsters move in and skim cash from casino counting rooms; an operation which allows them to launder money and reap illicit profits at the same time. We have seen attempts by organized crime to dominate gaming related Unions, and to obtain illegal control of casinos through improper loans as well as threats and intimidation. We have seen one time honest businessmen overwhelmed and corrupted by the ever-probing tenticles of organized crime. The battle has been continuous and all-consuming;it is never won and completely over.

As Chairman of the Gaming Commission my commission took action on what we believed were mob-influenced casinos. We imposed what were at the time the largest administrative fines in the history of the United States. We fought with legions of attorneys to shut down subverted casinos, and to clean up their operations.

I experienced some personal discomfort as a result of those battles. My life was repeatedly threatened and I was forced to obtain FBI and Police protection on a continuing basis. What really bothered me, however, were the threats and attempts against my family. My wife discovered a crude bomb attached to our car; my children constantly walked in fear to school under police observation.

I have not been alone in those experiences. Other public officials feared for their lives. Bob Broadbent, when he was a County Commissioner, was the repeated target of threats, and as did I, he often carried a gun for protection. Commissioner George Swarts had a bomb placed in his car.

As recently as last year, Ned Day, a Las Vegas columnist who repeatedly challenged and exposed the mob, awoke one morning to discover his car had been torched. The mob, you see, while they may appreciate Constitutional protection when we catch them, doesn't believe in freedom of the press.

My job was to protect the people of Nevada from the thugs and hoodlums who tried to muscle their way in to Nevada gaming. Today, our job is to protect the public and potential owners of gaming establishments on Indian lands from the same dark forces.

I can not and do not believe that small tribal groups of twenty, fifty, or even a few hundred individuals, often living in isolated communities, will be able to withstand the physical and financial onslaught of the sophisticated thugs and hoodlums who were a constant threat against the integrity of Nevada gaming. I want to urge this Committee to leave the power of regulation of gaming where it should be; in the hands of the States, which have the resources of money and personnel to adequately and effectively control any gambling they care to make legal.

If States have not legalized some form of gaming, then the chances are they do not believe it should be permitted within their borders. The various Legislatures are certainly most well fitted to analyze their resources and the reaction of their populace on a statewide basis; no small group of whatever origin should be permitted to undercut that fundamental legislative decision.

Some will tell you that this is a question of Indian sovereignty, and that the Federal Government should do nothing which might imply a role for other government entities. That argument is, at best, disingenuous.

I would like to point out, that in the current U.S. Code there are 13 Chapters containing over 2000 provisions governing State and Federal relations with Indian Tribes and Colonies. In the first six months of this Congress, dozens of pieces of legislation which affect Indian peoples have been introduced.

It also seems relevant that hundreds of millions of dollars a year are provided by the federal government to the same people who want non-regulated gaming and those dollars are spent by the Federal Government on those same lands where the gaming would be permitted. It hardly seems reasonable to argue on the one hand that we have a responsibility to fund those programs, and yet on the other that we have no responsibility to protect their beneficiaries.

Indeed, in this instance, even if there were a persuasive argument that Indian people should be free from State gaming regulation in games played only by tribal members, I do not for a moment believe, that is not the case before you. I can guarantee you the gaming facilities proposed will be aimed at non-Tribal patrons, and if you doubt my analysis, I invite you to propose to the gaming proponents that gaming participation by non-Tribal members be prohibited as a condition of passage of this legislation.

Mr. Chairman, the Federal Government has the legal authority and moral obligation to ensure that Tribal enclaves do not became sanctuaries for organized crime. It is our duty to prevent a situation where State authorities stand by impotently while their citizens are victimized, and the mob flaunts its operations before their helpless gaze.

Mr. Chairman, I am neither exaggerating nor engaging in hyperbole. Unless control of gaming remains with the States, the hope for controlling organized crime in this country will be lost forever.

Thank you.

PREPARED STATEMENT OF HON. JAMES H. BILBRAY, MEMBER OF CONGRESS FROM NEVADA

Mr. Chairman, thank you for this opportunity to submit testimony regarding gaming on Indian lands.

We in Nevada have over 55 years of legal gaming wagering experience, and we have in fact enjoyed many of the benefits as well as unpleasant side effects of legalized casino gaming. Prior to serving in the Congress, I served in both the legislative and judicial branches of Nevada government. It is from this perspective that I wish to discuss the bill of the distinguished Chairman of this committee.

Indian tribes increasingly are seeking to supplement their limited resources through the exercise of their sovereign rights by inviting the general public to come onto their lands to participate in various forms of legal wagering. But because of the special nature of legal gaming wagering, governmental regulation of such activity is necessary. The current question before Congress is whether this legal gaming wagering will be regulated by the Indian tribes, by the states where the tribal lands are located, or by the federal government, which retains authority over certain aspects of reservation life. A recent decision of the Supreme Court, Cabazon Band of Mission Indians, reaffirmed that state laws may be applied to tribal Indians on their reservations if Congress expressly provides for such application.

S. 555, introduced by the distinguished Chairman of this committee, seeks to balance the legitimate interest of the Indian tribes with the need to regulate gaming on Indian lands in order to minimize or avoid the effects of the actions of unscrupulous operators. This measure leaves to Indian control Class I traditional tribal games of chance. Class II gaming such as bingo and certain card games would come under substantial Indian control, possibly in conjunction with a national Indian gaming commission. Supervision and control of Class III gaming, which includes horse racing, dog racing, casino gaming including slot machines, jai alai and similar activities, would be a state function under a transfer of authority from the Indian tribe once the tribe had decided to offer Class III games. This is most appropriate given the expertise of state Class III gaming regulators on the oversight and control of this complex Class of gaming.

Because of the experience of the State of Nevada, I believe state supervision and control of Class III gaming is imperative for the following reasons:

- Class III games are complex and easily corrupted without constant vigilance by trained and experienced regulators.

Those states that now permit such gaming already have in place tested regulatory programs and trained programs.

The expertise and experience these states have acquired over the years cannot be readily replicated by the Indian tribes or by regulatory contractors to the tribes.

- A federal commission would not have the money, manpower, or expertise necessary to regulate Class III games.

The states have a strong interest in regulating all Class III gaming activities within their borders: The vast majority of consumers of such gaming on Indian lands would be non-Indian citizens of the state and tourists to the state. Similarly, most operators of the Class III games would be non-Indians with previous experience in such gaming.

The states have a constitutional responsibility to protect their citizens from harm, here in the form of fraudulent manipulation by the operators of the games and of victimization by criminal elements that may infiltrate the legal games operated on Indian lands. A state's citizenry has a right to be treated fairly in any commercial activity, whether provided by Indians or non-Indians.

Disparate treatment of the same activities within a state would not only create tremendous strains between the tribes and state law enforcement officials, it would also accord preferential treatment to one group of gaming operators.

A single state entity to regulate all Class III gaming within the state is the most efficient allocation of scarce resources.

The imposition of a state regulatory scheme on the Class III games operated on Indian lands would enhance both the appearance and the fact of integrity in the operation of the games.

Mr. Chairman, for all of these reasons, S. 555 deserves the support of this distinguished committee.

PREPARED STATEMENT OF HON. RICHARD H. BRYAN, GOVENOR OF NEVADA

I AM RICHARD BRYAN, GOVERNOR OF THE STATE OF NEVADA. I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE IN ORDER TO DISCUSS THE CONCERNS OF NEVADANS RELATIVE TO S. 555, THE INDIAN GAMING REGULATORY ACT OF 1987.

THE LEGALIZED GAMING INDUSTRY IS THE FOUNDATION OF NEVADA'S ECONOMY. TOURISM, GAMING, AND RECREATION EMPLOYMENT PROVIDE THIRTY PERCENT OF NEVADA JOBS. IN 1986, THE GROSS TAXABLE REVENUE GENERATED BY NEVADA GAMING BUSINESSES AMOUNTED TO $3.366 BILLION. TOTAL GAMING TAX COLLECTIONS FOR FISCAL YEAR 1986 WERE NEARLY $250 MILLION. THIS TAX REVENUE REPRESENTS ABOUT FORTY-THREE PERCENT OF NEVADA'S GENERAL FUND TAX COLLECTIONS FOR FISCAL YEAR 1986. AS YOU CAN UNDERSTAND, THE GAMING INDUSTRY IS, THEREFORE, A CRITICAL COMPONENT IN OUR ECONOMIC DIVERSIFICATION PLANS FOR NEVADA.

BECAUSE OF OUR STATE'S HISTORY OF LEGALIZED CASINO GAMBLING, NEVADANS ARE ESPECIALLY SYMPATHETIC TO THE INTEREST OF NATIVE AMERICANS IN UTILIZING GAMING AS A TOOL FOR ECONOMIC DEVELOPMENT. LIKEWISE, NEVADANS ARE PARTICULARLY SENSITIVE TO THE COMPLEX

PROBLEMS THAT ACCOMPANY THE LEGALIZED GAMING INDUSTRY.

WITH MORE THAN FIFTY YEARS OF EXPERIENCE, NEVADA CAN STRONGLY RECOMMEND THAT THE SINGLE MOST IMPORTANT MEASURE THAT CAN BE ADOPTED TO BENEFIT INDIAN GAMING IS A COMPREHENSIVE SYSTEM OF STRICT GAMING REGULATION.

WE BELIEVE THAT THE NEVADA GAMING CONTROL ACT PROVIDES THE COMPREHENSIVE REGULATORY STRUCTURE NECESSARY TO PROTECT OUR CITIZENS AND TOURISTS FROM THE DANGERS OTHERWISE ASSOCIATED WITH UNREGULATED AND UNCONTROLLED GAMBLING. ACCORDINGLY, I WOULD LIKE TO BRIEFLY DESCRIBE TO THE COMMITTEE SOME OF THE KEY ELEMENTS OF NEVADA'S REGULATORY SYSTEM.

UNDER NEVADA LAW, NO PERSON OR ENTITY CAN BE LICENSED TO CONDUCT GAMING OPERATIONS BEFORE COMPLETION OF AN EXHAUSTIVE BACKGROUND INVESTIGATION OF THE CHARACTER, ASSOCIATIONS, FINANCING, AND BUSINESS ACUMEN OF THE APPLICANT.

ADDITIONALLY, THE BOARD AND COMMISSION ARE EMPOWERED TO REQUIRE THE LICENSING OF ANY PERSON WHO MAY EXERT CONTROL OR HAVE A SIGNIFICANT INFLUENCE OVER THE OPERATIONS OF A LICENSED GAMING

ESTABLISHMENT. MANAGEMENT, VENDORS, LENDERS, FINANCIAL AND LEGAL ADVISORS OR CONSULTANTS MAY ALSO BE SUBJECTED TO AN INTENSIVE INVESTIGATION AND INQUIRY INTO THEIR SUITABILITY. EVEN OUR CASINO EMPLOYEES ARE REQUIRED TO OBTAIN WORK PERMITS IN ORDER TO BECOME EMPLOYED IN THE GAMING INDUSTRY.

NEVADA'S GAMING CONTROL BOARD IS CURRENTLY STAFFED WITH 364 FULL-TIME EMPLOYEES WHO NOT ONLY CONDUCT THESE INVESTIGATIONS, BUT ALSO EXAMINE THE ONGOING OPERATIONS OF GAMING LICENSEES. AUDITORS EMPLOYED BY THE BOARD CONTINUALLY EXAMINE THE FINANCIAL PRACTICES OF GAMING OPERATIONS TO PREVENT THE UNDERREPORTING OF TAXES AND UNLAWFUL CURRENCY TRANSACTIONS. IN ADDITION, OUR LICENSEES ARE SUBJECT TO ROUTINE AND UNSCHEDULED AUDITS BY THE STATE TO ENSURE STRICT COMPLIANCE WITH STATE IMPOSED INTERNAL ACCOUNTING SYSTEMS.

THE STATE GAMING CONTROL BOARD ALSO CONDUCTS SPECIAL INVESTIGATIONS AND COVERT OPERATIONS DESIGNED TO DETECT UNLAWFUL PRACTICES, HIDDEN OWNERSHIP, AND ANY INFILTRATION BY ORGANIZED CRIME WITHIN NEVADA'S GAMING INDUSTRY.

THIS REGULATORY SCHEME HAS BEEN ADMINISTERED BY NEVADANS FOR

NEARLY THREE DECADES. THE EFFECTIVENESS OF THIS SYSTEM OF REGULATION IS DEMONSTRATED BY THE VIBRANT CHARACTER OF THE GAMING INDUSTRY, AS WELL AS THE GROWTH AND PROSPERITY OF OUR STATE. STRICT GAMING CONTROL CAN PROVIDE A BUSINESS ENVIRONMENT THAT ENCOURAGES INVESTMENT IN THE INDUSTRY BY BOTH INDIVIDUAL ENTREPRENEURS AND LARGE PUBLICLY TRADED CORPORATIONS.

BASED UPON THIS EXPERIENCE, I WOULD LIKE TO SHARE OUR OBSERVATIONS CONCERNING S. 555. INITIALLY, I WOULD LIKE THE COMMITTEE TO KNOW THAT OF THE FOUR VERSIONS OF THE INDIAN GAMING REGULATORY ACT THAT HAVE BEEN INTRODUCED THIS SESSION, S. 555 AND H.R. 964, PROVIDE WHAT WE BELIEVE TO BE THE PREFERABLE SCHEME FOR REGULATING GAMING ON INDIAN RESERVATIONS. HOWEVER, WE STILL PERCEIVE SOME PROBLEMS THAT COULD DEVELOP UNDER THE PROVISIONS OF THE BILL.

S. 555 REQUIRES THAT AT LEAST TWO MEMBERS OF THE NATIONAL INDIAN GAMING COMMISSION MUST BE ENROLLED MEMBERS OF A FEDERALLY RECOGNIZED INDIAN TRIBE OR GROUP. UNDER THIS SECTION OF THE BILL, IT IS POSSIBLE THAT A MAJORITY OF THE COMMISSION WILL BE MEMBERS of tribal entities that have indirect pecuniary interests in Native American gaming operations. While section 5 of the Act disqualifies individuals from Commission membership where they have a *direct* financial interest in gaming on a reservation, an *indirect* interest in gaming is not prohibited.

The fact that a regulator may have a pecuniary interest in an organization that benefits from gaming presents a serious problem for the Act. In Nevada, gaming regulators and all employees of the regulatory agencies are precluded from having any pecuniary interest in any organization holding a gaming license or doing business with a person or organization that has such an interest. We believe this type of detachment from the gaming industry is absolutely necessary to inspire public confidence in the regulators and avoid any appearance of impropriety for the Commission.

Another concern we have involves the definition of Class II gaming. Section 4 of the Act provides that electronic or electromechanical facsimiles of bingo, lotto, and other similar

GAMES ARE AUTHORIZED AS CLASS II GAMING. SIMILARLY, THIS SECTION GRANDFATHERS HIGH-STAKES CASINO GAMING OPERATIONS EXISTING ON JANUARY 1, 1987.

BOTH OF THESE DEFINITIONAL PROVISIONS SEEM INCONSISTENT WITH THE GENERAL PREMISE OF THE LEGISLATION THAT FULL-SCALE CASINO GAMING OPERATIONS SHOULD BE REGULATED BY THE RESPECTIVE STATES PURSUANT TO AN AGREEMENT WITH THE TRIBAL GOVERNMENTS. ELECTRONIC AND ELECTROMECHANICAL GAMING DEVICES ARE PRIMARY TARGETS OF ORGANIZED CRIMINAL GANGS THAT EMPLOY SOPHISTICATED METHODS OF CHEATING THE MACHINES. NEVADA AND NEW JERSEY GAMING REGULATORS, GAMING DEVICE MANUFACTURERS, AND GAMING LICENSEES HAVE INVESTED IN EXTREMELY EXPENSIVE SECURITY SYSTEMS TO THWART THESE CHEATERS. NEVERTHELESS, LITERALLY MILLIONS OF DOLLARS ARE LOST ANNUALLY TO THESE CRIMINALS. THERE IS NO REASON TO BELIEVE THAT CLASS II GAMING OPERATIONS ON INDIAN RESERVATIONS WILL HAVE THE FINANCIAL OR TECHNICAL RESOURCES TO EFFECTIVELY COMBAT THESE PROBLEMS.

FURTHERMORE, THE GRANDFATHERING PROVISIONS WILL PERMIT FULL-SCALE CASINO GAMING IN THOSE JURISDICTIONS WHERE THE TRIBES WERE operating this type of gaming on January 1, 1987. The regulatory problems associated with these gaming operations are no different than those involved with Class III gaming operations that pursuant to the Bill are subject to state regulatory oversight. Congress should not create havens where strict gaming control will not apply with respect to full-scale casino gaming.

Section 11 of the Act places Class II gaming under the regulatory jurisdiction of the Indian tribes. Where these operations are conducted by tribal organizations, the Act requires approval of an ordinance that contains certain provisions. Class II gaming operations in Indian country by non-Indians may also be approved if the tribal ordinance adopts a regulatory scheme as restrictive as that established by state law for similar gaming within the jurisdiction of the state. These provisions present concerns as well.

As to Class II gaming conducted by tribal members, the Act should contain more stringent regulatory oversight by the Indian Gaming Commission with respect to the sources of financing

FOR THESE OPERATIONS, THE BUSINESS RELATIONSHIP BETWEEN TRIBAL GAMING OPERATORS AND THEIR CONTRACT SUPPLIERS, THE EMPLOYEES OF THE GAMING ESTABLISHMENT, AND THE IMPLEMENTATION OF ADEQUATE SECURITY AND INTERNAL CONTROL SYSTEMS WITHIN THE GAMING OPERATION.

In instances where Class II gaming on Indian reservations would be conducted by non-Indians, the Act should require state regulatory control identical to that imposed by the proposed law for Class III gaming. Even though the expense of adopting and administering a regulatory system that is identical to the state regulatory apparatus would be burdensome for Native Americans, the protection provided to the public through strict control of gambling justifies such a burden.

During fiscal year 1986, Nevada's cost of gaming control was over $13 million. The budget for Nevada Gaming Control agencies in fiscal year 1987 will exceed $14 million. If economic development is the aim of Indian gaming, then Class II gaming conducted by non-Indian businesses should be regulated by the states so that tribal organizations can realize the full value of

THE REVENUES FROM THESE ENTERPRISES. STATE REGULATION OF THESE PARTICULAR CLASS II GAMING OPERATIONS WOULD ALSO ALLEVIATE THE PROBLEM OF TRIBAL GOVERNMENTS ATTEMPTING TO APPLY THE COMPLEX RANGE OF DISCRETIONARY AND JUDGMENTAL FACTORS INVOLVED IN A REGULATORY PROCESS THAT IS ADOPTED WITH REFERENCE TO STATE LAW, BUT WHICH DOES NOT PROVIDE THE NECESSARY EXPERIENCE AND EXPERTISE REQUIRED OF REGULATORS IN GAMING MATTERS.

FINALLY, WE HAVE CONCERNS REGARDING THE ADEQUACY OF FUNDING FOR THE COMMISSION. THE ANNUAL FEES IMPOSED UPON TRIBAL GAMING ENTERPRISES ARE BASED UPON A PERCENTAGE OF GROSS REVENUES. GROSS REVENUE IS DEFINED AS TOTAL WAGERED MONIES LESS PRIZE MONEY AND CAPITAL INVESTMENT COSTS. USE OF THIS FORMULA MAY SERIOUSLY DIMINISH THE REVENUE BASE FOR THE COMMISSION'S ASSESSMENTS. DURING THE DEVELOPMENTAL STAGES OF GAMING ENTERPRISES AND DURING PERIODS WHEN THESE BUSINESSES EXPAND OR REFURBISH THE GAMING PROPERTIES, CAPITAL INVESTMENT COSTS MAY FREQUENTLY EXCEED CURRENT PERIOD REVENUES. AS A RESULT OF THIS FACT, THE COMMISSION MAY NOT OBTAIN SUFFICIENT FUNDING TO PERFORM THE CRITICAL FUNCTIONS OF A

FEDERAL GAMING REGULATORY AGENCY.

LEGALIZED GAMING CAN BE A POWERFUL TOOL FOR THE ECONOMIC DEVELOPMENT OF INDIAN COUNTRY. INDIAN GAMING, HOWEVER, IS NOT A PANACEA FOR THE ECONOMIC DIFFICULTIES OF NATIVE AMERICANS. AS DEMONSTRATED BY THE EXPERIENCE OF NEVADANS, LEGALIZED GAMING IS AN INDUSTRY THAT IS ATTENDED BY COMPLEX PROBLEMS THAT HAVE COSTLY SOLUTIONS REQUIRING STRINGENT GOVERNMENT OVERSIGHT.

WITHOUT A COMPREHENSIVE SCHEME FOR STRICT GOVERNMENT REGULATION, LEGALIZED GAMING ON THE RESERVATIONS WILL BE AN EMPTY PROMISE FOR ECOMONIC DEVELOPMENT. FEDERAL, STATE, AND TRIBAL LAW ENFORCEMENT AGENCIES MUST BE ASSURED THAT INDIAN RESERVATIONS WILL NOT BECOME SANCTUARIES FOR ORGANIZED CRIME. THE PUBLIC MUST BE CONFIDENT THAT INDIAN GAMING ENTERPRISES ARE CONDUCTED HONESTLY. FEDERAL OFFICIALS AND TRIBAL GOVERNMENTS MUST BE CONVINCED THAT GAMING TAX REVENUES ARE PROTECTED. MAJOR CORPORATIONS MUST BE CERTAIN THAT INVESTMENT IN GAMING RESORTS IN INDIAN COUNTRY IS A LEGITIMATE AND PROFITABLE ENDEAVOR.

THE ADOPTION OF A THOROUGH REGULATORY SYSTEM FOR GAMING ON

Indian reservations is the only certain method of achieving these objectives. A National Indian Gaming Commission must have the power and resources to administer this type of a regulatory apparatus. Properly drafted, the Indian Gaming Regulatory Act of 1987 can provide the legal framework for the Commission to perform this important task. In partnership with the states, Native American tribal organizations, the Commission and other federal agencies, we can promote a regulatory environment for legalized gaming in Indian country that will balance the economic development goals of the tribes with the legitimate concerns of law enforcement, taxing authorities, and business. Thank you for your attention to my remarks.

PREPARED STATEMENT OF G. MICHAEL BROWN, ESQ. BROWN & MICHAEL LAW FIRM, ATLANTIC CITY, NJ

G. Michael "Mickey" Brown is a partner in the law firm of Brown and Michael with offices in Atlantic City, New Jersey and Sea Girt, New Jersey. He was graduated from Seton Hall Law School in 1967 with a Juris Doctor degree and was admitted to practice the same year before the New Jersey and Federal Bar. In 1982, Mr. Brown was admitted to practice in the State of New York. Mr. Brown, his wife Sharon, and their three daughters reside in Sea Girt, New Jersey.

From July, 1980 through April, 1982 Mr. Brown served as the Director of the New Jersey Division of Gaming Enforcement after being appointed to that position by the then Governor Byrne. Between 1972 and 1980, Mr. Brown served in various capacities within the Division of Criminal Justice of the New Jersey Attorney General's Office. He served as Chief Trial Attorney and as Deputy Director of Operations for the Division of Criminal Justice.

During his tenure as the Director of Gaming Enforcement, he participated in the supervision of the opening of seven casino hotels within a twenty month period and supervised the original licensing hearings of five casino hotels before the Casino Control Commission.

Since leaving Government, Mr. Brown has served as counsel to the Board of Inquiry into Casinos in Melbourne, Australia; as a consultant to the Treasurer of Queensland, Australia, for the purpose of drafting and adopting casino legislation; as American counsel for Genting Berhad Casino Hotel Corporation of Kuala Lumpur, Malaysia. Mr. Brown has represented American casino interests in New Jersey, the Commonwealth of the Bahamas, London, Malta, Jamaica, Australia, and the Caribbean.

I am G. Michael Brown engaged in the private practice of law in Atlantic City, New Jersey. I appreciate the opportunity to address you today on the subject of casino regulation.

During the infancy of the casino industry in New Jersey, I served as the Director of the Division of Gaming Enforcement, participating in the supervision of the opening of seven (7) casino hotels within a twenty (20) month period and supervising the original license hearings of five (5) casino hotels before our Casino Control Commission.

I would like to share with you some of the concerns and experiences that we, in New Jersey, had to deal with while introducing a new form of tourist attraction into our State, while at the same time attempting to maintain the required public trust and confidence in the regulation of legalized casino gaming.

Casinos were approved by the voters of New Jersey when they passed a casino referendum in November of 1976, after some 200 years of constitutional prohibition and after one formal rejection by the voters of constitutional change, a casino referendum was defeated in 1974. In discussing this industry, we should not forget that 48 out of 50 states in this country still reject the idea of casinos within their boundaries.

The Casino Control Act, N.J.S.A. 5:12-1 et seq. which was signed into law on June 20, 1977, created two (2) new government agencies, the Division of Gaming Enforcement and the Casino

Control Commission. The Division of Gaming Enforcement was created within the Office of the Attorney General of New Jersey to investigate casino license applications by companies and individuals, to enforce regulations imposed upon the casino operations and to prosecute all regulatory violations before the Casino Control Commission, in addition to the investigation and prosecution of enumerated casino crimes. The Division of Gaming Enforcement is supervised by a Director, appointed by the Governor with the consent of the Senate and maintains a staff of approximately 450 men and women consisting of 20 attorneys, 150 agents with investigative and accounting backgrounds, 125 members of the New Jersey State Police directly assigned to the Division and support and administrative staff. During the fiscal year of 1987, the operating budget of the Division of Gaming Enforcement was approximately $34 million.

The Casino Control Commission approves and issues the licenses to casinos and individuals that work therein and ancillary businesses that provide gaming and non-gaming equipment and services to the casino industry. The Commission which is comprised of five (5) full-time members also promulgates the rules and regulations which control in great detail the operation of the casino facility along with the approval of gaming equipment. The Commission also hears violations of regulations and has the authority to suspend or revoke individual or company licenses. The Commission maintains a staff of inspectors who are always present on the casino floor, in uniform, to receive patron complaints, observe gaming operations and provide the public with a continual reminder of government surveillance. The Commission maintains a staff of approximately 425 personnel and this year had an annual budget of approximately $24 million.

That's a lot of money and a lot of people to regulate 12 buildings in a small New Jersey shore town! Why?

Let me discuss with you briefly the gross casino revenues generated in this business. Gross casino revenue or "win" as it is called in the industry, represents what the casino wins from the patrons before taxes and expenses are deducted. During 1986, the casino industry in New Jersey realized a total win of $2.2 billion dollars. The total win for the leading individual casino in 1986 was $259.6 million dollars or an average of $710,000 a day for 365 days.

During the month of April, 1987, the twelve operating casinos had a gross win of $199 million including a record-setting win of $19.6 million by one casino during its first full month of operation.

In 1977, the year before the casinos opened in Atlantic City, there were approximately 3 million annual visitors. Last year, close to 30 million people visited this small ocean front community that has a permanent population of 39,000 residents.

I tell you all this in a sincere attempt to impress upon you the need to prepare for strict regulatory legislation implemented by well-staffed, well-trained regulatory personnel to administer and maintain a high level of integrity in casino licensing and operation.

Casino regulation, if it is to be effective, requires thorough investigation of individuals and companies, who wish to participate in the ownership and operation of casinos.

The public perception in many communities is that casinos are a problem. The roots of this public perception are not difficult to trace and are well deserved. The beginnings of casino gaming in this country do involve organized crime. The story of Bugsy Siegel and the Flamingo Hotel in Las Vegas has been told many times. It is a well established part, not of lore, but of fact. To a great degree, casinos are different. Casinos deal in many millions of dollars a day in cash transactions and record few of them. Chips for cash and wins paid without recordation, verified only by observation. There is no cash register on a craps table. Is the public wrong to perceive this situation as one ripe for misbehavior? In events which could hardly be termed historical, hidden organized crime interests and orchestrated criminal activity have been identified in large and small casinos in Las Vegas, including the Jolly Trolly, the Alladin, and others. But in the end analysis, the public's view of casinos cannot be attributed to any singularly identifiable factor. It results, I suppose, from a combination of all of these factors and from that which, for the lack of a better description, will have to be called "intangible." Casinos have no monopoly on bad press or on criminal revelations within their ranks. Yet, these factors seem simply to have a greater effect on casinos than they do on other forms of business.

No serious debate over the legalization of casinos in any jurisdiction exists without the idea of some form of strict governmental control. The debates may focus on degree, but no state or country should be ready to accept casinos without forming a strict regulatory body to administer them.

And so, the deserved and undeserved image which casinos possess, brings with it the need for elaborate systems of governmental control. But more than that, it brings with it the need to make sure that those systems are well-known and are publicly understood.

Casino regulation is the result of concern--concern over organized crime infiltration, concern over skimming, concern that the weak and unwary will be taken advantage of, fear of drugs, fear of prostitution, and a host of other concerns both real and unreal which arise in the collective public's mind when the topic of casino gambling is debated. An effective casino regulator must share many of those concerns. As effective casino regulator must understand what the public feels when the public is faced with a casino in its midst.

"Skimming", the truly blasphemous word of the casino industry, is the worldwide fear. In any state or country considering the introduction of casino gaming, the question arises. Most of the skeptical questions asked are based on an understandable lack of appreciation of internal controls. Questions like, "How can you really keep track of all that cash, in excess of $500,000 a day, in some casinos of $1 million a day?

Come on now", the skeptics says, "you can't control that much cash." This has consistently been the most difficult question to answer. The issue generates the most skepticism and the response must be systematic and thorough. In the past, we have begun our answer by describing the licensing process in place in New Jersey which thoroughly screens all prospective casino employees before they are allowed to enter the casino industry. One must then go on to describe the security systems employed by the operating casinos in New Jersey, both physical manpower and mechanical capabilities. Surveillance departments with access to catwalks and closed circuit television systems give some comfort to the questioner but the two most important attributes of the control process, appreciated by the novice, are the internal control systems employed in the cage area monitoring the movement of chips, fills, credits, openers, closers, multi-part documents, copies of which wind up in various departments of the casino and secondly, the physical presence and participation of the casino control inspectors, government officials, in the collection of the drop boxes and the observation of the count. Students of cash control are most impressed by government presence in the count room and supervision of the verification of the count. Presence of gaming officials, police and inspectors, during all operating hours is a condition which an emerging jurisdiction must require in their authorizing legislation.

Casinos are unique in the purpose they serve and in the threat they pose. Thus the need for casino regulation and thus the aims that casino regulation must serve.

Any assessment of the efficacy of a regulatory structure is obviously open to debate and dispute. I could stand here, for example, and say that, of the billions of dollars which have been wagered in Atlantic City casinos since May of 1978, we presently know of no improper diversion of funds which was management directed. I could attribute that, as I do, at least in part, to the present system of regulatory controls.

But some would say that no diversion of funds has been found because casino operators are honest, and therefore, no regulations are necessary to prevent such impropriety. Then there are others who would say that we have found no skims because our controls are not rigid enough to allow us to discover them.

I am not an advocate or opponent to the expansion of casino gaming. I respectfully suggest to the Members of the Committee, that if you decide to allow Class III gaming, including casino gaming and slot machines, you do so by including in the authorizing legislation, the requisite regulatory authority and provide with specificity, which agency of government is best suited to and will be responsible to maintain the high level of integrity which exists in the casino industry in the United States today. New Jersey learned from Nevada. Capitalizing on its successes and avoiding some of its history. We have shared that education with government regulatory agencies in Great Brittain, the Bahamas, the Caribbean, Australia and some European Countries. So long as there is a recognition of the responsibility being accepted, existing in the casino regulatory agency, will work with whatever system of regulation you choose.

Thank you.

PREPARED STATEMENT OF HON. PETE V. DOMENICI, SENATOR FROM NEW MEXICO

Mr. Chairman, I am pleased to be a part of your fine efforts to establish a national Indian gaming policy. The events of the past three years, culminating in the Supreme Court decision of February 25, 1987, clearly point to the need for such a policy.

In New Mexico, the Acoma, Sandia, Isleta, Tesuque, and San Juan Pueblos all operate high-stakes bingo on their reservations. I have stated publically that I would rather see more productive forms of economic development on the reservation. Bingo is not my favorite notion of economic development. Yet, I also support the policy of self-determination and will, therefore, support and respect the decision of these pueblos to conduct bingo games on their lands.

I have my doubts about the real profitability of these games. I know that contractors are making their money, and the loans on facilities are being paid. There has been little if any profit for the members of these pueblos who allow the use of their land for this purpose.

The future may hold better returns to the pueblos. I hope so. At a minimum, there is better employment opportunity on the reservations. Indians are employed in the concessions, parking, and operation of the games.

Mainly because of these employment opportunities, I have continued to support legislation that would allow the legal, but carefully monitored operation of high-stakes bingo on the reservations.

The real problem that I see on these federal reservations is the expansion of gaming beyond bingo. I oppose the notion that horse racing, dog racing, casino gambling, jai alai, and the like are protected by virtue of being conducted on reservation land. I believe that once a tribe decides it wants to conduct any of these forms of gambling beyond bingo, it should also be willing to accept direct supervision by the state.

I am firmly convinced that only those forms of gambling that are allowed by a state should be allowed on Indian land. The reservations should not become havens for those who seek refuge from existing state law. I see no need to create new federal commissions to oversee gambling activities that are already monitored by the states when conducted off the reservations. We should not be in the business of creating another layer of government to duplicate what can be done by the state.

In the case of cigarette taxes on the reservation, we did not create a federal bureaucracy to collect the legitimate state taxes. Similarly, we should not create a federal bureaucracy to oversee gambling activities governed by state law and backed by existing enforcement mechanisms.

The only exception to this rule that I would support is bingo. Since the pueblos and tribes have already invested in and are operating bingo parlors, I would not want to force them to lose money on that investment. As I said before, bingo is not my favorite form of job creation, but it does work and more Indian people are employed because of it.

Further, I would not oppose the establishment of new bingo games if they met the legal and administrative standards proposed in the bill before this committee today. I believe it is important to insure, to the best of our ability, the public confidence in the integrity of high-stakes bingo. This also helps the pueblo or tribe in its marketing of these games to non-Indians.

This brings me to my next major point, Mr. Chairman. When we talk about Indian gambling or high-stakes bingo on the reservation, we are not talking about gambling among Indians. In fact, most participants are non-Indians. These non-Indians are clearly regulated by state law when they go to a horse race track anywhere else in the state. The issue of regulation is not so clear on Indian land.

I think it is important to emphasize two kinds of sovereignty -- state sovereignty and Indian sovereignty. This issue seems to be the most difficult one to resolve with regard to Indian gaming because both sides claim sovereignty.

I have, for example, a letter and resolution from my good friend, Herman Agoyo, Chairman of the All Indian Pueblo Council (AIPC) in New Mexico. Herman makes it very plain that the AIPC is opposed to any kind of state control for any kind of legal gambling activity on Indian land whatsoever.

The AIPC resolution says that "State jurisdiction would undermine and impair the ability of the Tribes to be self-governing and would thereby undermine longstanding federal laws and policies promoting Tribal self-governance."

Mr. Chairman, I would like to make this letter and resolution a part of your hearing record.

Although I do not completely agree with this resolution, especially as it relates to the role of the state in regulating gambling beyond bingo, I feel that the record of this committee should include the AIPC resolution.

There seems to be a resurgence of opposition to any form of state involvement in our efforts to control gambling on Indian land. The AIPC resolution, as an example, takes note of the Supreme Court decision in California v. Cabazon Band of Mission

Indians. In this case, the State of California sought to excercise its sovereign rights to control gambling on the Indian reservations in that state.

The AIPC believes that in the *Cabazon* case the Supreme Court "has reconfirmed several basic doctrines of the federal tribal trust relationship in the context of Indian gambling." The AIPC goes on to conclude that "the court has once again found that the states lack authority to exercise jurisdiction over activities conducted on Indian land and that only the United States and the Tribes possess such authority."

In reading the *Cabazon* case, however, the Supreme Court was very careful to affirm that state laws may be applied in some cases, even without express Congressional consent, "unless such application would interfere with reservation self-government or would impair a right granted or reserved by federal law." "Our cases, however," the Court says,"have not established an inflexible *per se* rule precluding state jurisdiction over tribes and tribal members in the absence of express congressional consent."

Thus, even if Congress is silent, there are still cases (e.g. *Mescalero Apache Tribe v. Jones*) where "state laws may be applied" to Indian reservations.

The *Cabazon* case was decided the other way. That is, the State of California was found to be interfering with federal policy and Indian self-determination, and the state bingo laws were found to be inapplicable to the Cabazon and Morongo Bands of Mission Indians. This does not mean, therefore, that all Supreme Court cases will be decided against state authority on Indian land.

Perhaps the most important statement by the Supreme Court in the *Cabazon* case with regard to state involvement is the affirmation that state laws "generally are not applicable to tribal

Indians on an Indian reservation except where Congress has expressly provided that State laws shall apply." Thus, "express congressional permission" is the major exception to the general non-applicability of state laws on Indian reservations. The Supreme Court, however, has also affirmed the congressional authority to mandate the application of state law.

The question then becomes, not whether the Supreme Court has decided that state laws may not be applied, but does Congress see a public policy need requiring the application of state law? Where Congress expresses a clear policy of state involvement on Indian reservations, the Supreme Court will recognize the right of the Congress to do so within reasonable bounds. In the absence of congressional direction, existing law and policy, as in the Cabazon case, will apply.

Mr. Chairman, I am here today to agree with you that Congress must take a position on all Indian gaming, and I agree with the policy you have articulated in S. 555, the "Indian Gaming Regulatory Act."

I congratulate you for drafting legislation that is built upon the agreements we worked hard to reach last fall. We were very close to agreement in the final days of the 99th Congress, but we were not able to act in time.

The Supreme Court decision in the Cabazon case is the best decision that could be made in light of congressional silence on this issue. I agree with the decision of the Supreme Court, and I conclude that we must clarify the law and set the national policy.

In its simplest terms, S. 555 leaves traditional Indian ceremonial games to the jurisdiction of the tribes. Class II gambling, which includes existing card games and high-stakes bingo, is regulated by a five-member commission. The Chairman of the National Indian Gaming Commission is appointed by the

President with the advise and consent of the Senate, and the four associate members are appointed by the Secretary of the Interior.

To conduct bingo and other class II activity on Indian land, a tribe must have a license from this commission. The commission will have the power to approve tribal resolutions regulating class II gaming, approve management contracts, levy and collect fines, close games, and generally authorize the conduct of class II gaming on Indian land.

If a tribe makes the threshold decision to compete in gambling beyond class I and class II, it may do so only with the express consent of the Secretary of the Interior. In general, this act prohibits class III gaming such as horse racing, dog racing, casino gambling, and jai alai.

If a tribe decides to enter class III gaming, it must do so under the same state rules, regulations, permits, and controls as any other class III activity whether or not the gaming is conducted by Indians. I agree that we should not create a special class of horse racing, for example, on Indian reservations. The result would be two kinds of legal horse racing in any state that allowed it -- one set of rules for the reservation and another set of rules for the rest of the state.

I am honestly concerned that we would be creating a regulatory nightmare without the proper experience or manpower to manage such a system. By allowing the federal regulation of bingo and other class II gaming, we are already taking a large step into the unknown. To expand this new and untried federal regulatory approach could be disastrous.

The legislation before us today creates a very specific mechanism by which a tribe could enter into class III gaming. There is no state law imposed on the reservation unless initiated by the tribe in order to participate in legal gambling in that state (except, of course, for bingo and other class II gaming).

Thus, the fear of direct imposition of state law on Indian land is avoided unless there is a decision by the tribe to establish a class III gambling business.

Mr. Chairman, I feel strongly that your bill is a very good approach to a complicated situation. I feel that your bill protects class II gaming and establishes a very good oversight mechanism. I see no national purpose to creating another federal responsibility for class III gaming. The states already have this responsibility and the related rules, regulations, permits, and controls.

I, for one, would rather not give special privileges to reservation lands to encourage yet another form of heavy gambling. Yet this bill does not prohibit participation in such forms of gambling. In order for a tribe to participate, the Secretary of Interior must be satisfied that the share of betting pools returned to the bettor in the Indian enterprise are at a parity with the betting pools of the non-Indian enterprises of a similar nature. There are several other concerns that the Secretary will weigh before granting legal consent to a transfer of all civil and criminal jurisdiction over the proposed gaming enterprise to the state where the enterprise will be located.

The state would then have full authority over the proposed enterprise and would be prohibited from charging fees that are higher than fees for similar games in the state. This is not an easy procedure, but I believe that it should not be our policy to encourage more gambling on Indian land.

On the other hand, it is important not to prohibit such activity if it will be conducted in the same manner as on non-Indian land. This bill meets this test of fairness.

In conclusion, I would like to thank the Chairman and his committee for a job well done. It is difficult to draw the necessary lines between encouraging the continuation of a profitable enterprise and the discouragement of gambling excesses. I believe S. 555 is a balanced and fair approach to this needed public policy for regulating gambling on Indian land.

HERMAN AGOYO, *Chairman*
SEFERINO TENORIO, *Vice Chairman*
JOHN GONZALES, *Secretary-Treasurer*

ALL INDIAN PUEBLO COUNCIL

OFFICE OF THE CHAIRMAN

1015 Indian School Road, N.W. • P.O. Box 6507 • Albuquerque, New Mexico 87197-6507 • (505) 247-0371 / Ext. 224, 225

March 25, 1987

Senator Pete Domenici
Attn: Joe Trujillo, Legislative Assistant
434 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Domenici:

On behalf of the Pueblos of Sandia, San Juan, Tesuque, Isleta, Acoma and Santa Ana I want to take this opportunity to express our views on the bills currently pending before the Congress to regulate Indian gaming. I am enclosing a detailed statement of our views for your review and consideration.

In general, we are supportive of federal legislation to regulate Indian gaming so long as such legislation is consistent with the federal trust relationship and established principles of federal Indian law. We believe that any bills passed by the Congress should clearly promote Indian self-sufficiency and self-determination. We are not supportive of any proposal which would subject Tribes to state jurisdiction to undermine our sovereign authority.

We look forward to working closely with you on this issue. If you should have questions or need any assistance, I urge you to either contact me directly or through our Washington representative, Mr. Eric Eberhard, who can be reached at (202) 457-9500.

Thank you again for your kind consideration and assistance.

Sincerely,

ALL INDIAN PUEBLO COUNCIL

Herman Agoyo
Herman Agoyo, Chairman

ALL INDIAN PUEBLO COUNCIL

Position
of the
Pueblos of Sandia, San Juan, Tesuque
Isleta, Acoma and Santa Ana

On
Federal Legislation To Regulate
Gaming on Indian Land

H.R. 1079, H.R. 964 & S.555

I. INTRODUCTION

The recent decision of the United States Supreme Court in the case of California v. Cabazon Band of Mission Indians has reconfirmed several basic doctrines of the federal tribal trust relationship in the context of Indian gaming. In particular the court has once again found that the states lack authority to exercise jurisdiction over activities conducted on Indian land and that only the United States and the Tribes possess such authority. The Cabazon case also reconfirms the longstanding role and responsibility of the United States for the promotion, protection and regulation of trade and commerce with the Indian Tribes. Finally, the Cabazon case has reconfirmed the legitimate federal and tribal interest in promoting Indian self-governance and economic self-sufficiency.

It is the goal of the Pueblos engaged in gaming activities to ensure that federal legislation is enacted which is consistent with existing federal Indian law, promotes Tribal self-governance and enhances Tribal economic self-sufficiency.

II. General Position on Gaming Legislation

1. Federal legislation is desirable because it will underscore the fact that regulation of Indian gaming has been preempted by federal and tribal law.

2. Uniform standards for the conduct of Indian gaming are necessary for the protection of both the Tribes and the patrons of the gaming activities.

3. Indian gaming control legislation should be consistent with existing statutory and case law relating to other economic and business activities of Indians on Indian lands.

4. The legislation should clearly recognize gaming as a legitimate means of generating Tribal revenues, promoting economic development and enhancing self-determination through Tribal control.

II. General Position on Gaming Legislation (continued)

5. The legislation should clearly provide for and authorize Indian gaming in any state within which similar activity is permitted by non-Indians under state law.

6. The legislation should prevent the intrusion of organized crime or criminal activity into Indian gaming for the benefit of the Tribes and the patrons of the Indian games.

III. Position of State Participating in the Regulation of Indian Gaming

1. State jurisdiction over Indian gaming would be contrary to federal Indian law as enunciated through the United States Constitution, the Treaties, federal statutes, court decisions and, in many instances, state constitutions.

2. State jurisdiction would undermine and impair the ability of the Tribes to be self-governing and would thereby undermine longstanding federal laws and policies promoting Tribal self-governance.

3. State jurisdiction would inevitably undermine federal efforts to promote Tribal economic self-sufficiency due to the direct financial interest held by many state governments in their own gaming operations.

IV. Position on the Indian Gaming Regulatory Commission

1. The Commission should be structured and organized in a manner which will enable it to fulfill the federal trust responsibility for the protection and promotion of Tribal interests and Tribal self-governance.

2. The authority of the Commission should be carefully balanced to provide for deference to the primary regulatory authority of Tribal governments.

3. An independent federal commission is preferable to the establishment of another administrative office in the Department of the Interior.

4. The operations of the Commission should be funded entirely from federal appropriations. No other federal regulatory entity is funded through an annual assessment of the entities it regulates. The federal trust and responsibility is to promote and protect Tribal interests and there is no rational basis for expecting the Tribes to bear the financial burden of financing the Commission.

5. Enforcement decisions and actions of the Commission should be undertaken in the context of the federal duty to promote and protect Tribal economic self-sufficiency and self-governance. Sanctions or penalties should only be imposed by the Commission in a manner which is the least disruptive of gaming operations while insuring the integrity of the operation for the benefit of the Tribes and the patrons.

PREPARED STATEMENT OF ROSS O. SWIMMER

Mr. Chairman, I am pleased to testify today on S.555 and S. 1303 which are bills providing for the regulation of gaming in Indian country.

Although S. 555 and S. 1303 each contain provisions we support, S. 555 is the significantly better of the two from our view point and we will work with the Committee and the Department of Justice on amendments to improve the bill. Of course, the bill proposed to the 99th Congress on May 20, 1986 by the Departments of Interior and Justice and intoduced as S. 2557 would also be acceptable.

As the Committee is aware, on February 25, 1987, the U.S. Supreme Court in California v. Cabazon Band of Mission Indians held that State and local regulation of bingo and card rooms on Indian reservations is preempted by Federal law.

Notwithstanding the Supreme Court's decision in Cabazon, Federal legislation on Indian gaming is, in our view, still necessary. We believe that it is essential that the Congress enact legislation which provides adequate authorities for the regulation of gaming in Indian country in order to protect the tribes and the gaming customers. Because of the relatively large amounts of cash involved and the important source of revenue that bingo provides for some tribes, effective regulation is vitally important.

We have no more current information concerning the gaming in Indian country than we provided in our testimony to this Committee in the 99th Congress. At that time we reported that there were some 108 gaming facilities on Indian land and that 104 of those had bingo, 93 had pull tabs or punch boards, 15 had card games, 4 had casino gaming, and 15 had other gambling activities. We estimated that a national estimate of $100 million in gross receipts from these activities would not be excessive and that one tribe reported a gross annual receipts from gaming of $15.5 million.

The authorities available to the Department of the Interior are of limited use in connection with gaming. The Court made note of our use of the tribal contract approval requirement provision in 25 U.S.C. 81 in connection with contracts tribes have entered into for the management of gaming activities. A related criminal provision is in 18 U.S.C. 438 but the penalties are relatively minor. Other authorities which might be used in the absence of the enactment of new Federal legislation are the so called Indian traders laws in 25 U.S.C. 261, 262, and 264. However, these provisions are also inadequate to deal with the specific problems of gaming.

The only Federal law specifically relating to gaming in Indian country is the provision in 15 U.S.C. 1175 prohibiting the possession or use of gaming devices within Indian country. In addition, sections 1301-1307 of title 18, U.S. Code prohibit advertising of lotteries, including bingo, through the mail or on radio or TV, with exceptions for State-run lotteries.

The Department of Justice has available to it the criminal laws that would apply to crimes that might occur in connection with a gaming activity, including embezzlement or theft from a tribal organization under 18 U.S.C. 1163. It should be noted that the Court in the Cabazon decision specifically did not decide whether, or under what circumstances, the provision of the Organized Crime Control Act in 18 U.S.C. 666 and 1955 could be used by the Federal Government to prosecute bingo or other gaming in Indian country which "is a violation of the law of the State or political subdivision in which it is conducted" and meets certain other requirements.

President Reagan's Indian Policy includes the following passages which should be kept in mind in developing the Federal policy on Indian gaming:

> It is important to the concept of self-government that tribes reduce their dependence on Federal funds by providing a greater percentage of the cost of their self-government. Some tribes are already moving in this direction. This administration pledges to assist tribes in strengthening their governments by removing the Federal impediments to tribal self-government and tribal resource development...This Administration affirms the right of tribes to determine the best way to meet the needs of their members and to establish and run programs which best meet those needs...
>
> It is the policy of this Administration to encourage private involvement, both Indian and non-Indian, in tribal economic development. In some cases, tribes and the private sector have already taken innovative approaches which have overcome the legislative and regulatory impediments to economic progress.
>
> Since tribal governments have primary responsibility for meeting the basic needs of Indian communities, they must be allowed the chance to succeed...

With the foregoing in mind, we have developed our view on legislation for the regulation of gaming in Indian country. The various bills in this and the 99th Congress address three categories of gaming: (1) social and Indian ceremonial; (2) bingo; and (3) all other forms of gaming.

Social and ceremonial gambling is not operated for profit and involves only small stakes and only the Indian community. Therefore, we believe that no regulation need be imposed on these activities and we support section 11(a)(1) of S. 555 and section 10(a) of S. 1303.

We oppose State control over bingo because it would drive Indian bingo out of business by subjecting it to the days, hours, prize and other restrictions of the States. Some States limit bingo to charitable organizations and at least one prohibits the payment of compensation to employees operating the games. We believe that the Federal and tribal law enforcement problems involved with bingo are manageable, that such enforcement can be financed by the proceeds of the games, and that State regulation is not warranted. However, we believe that the cost of Federal regulation should be paid by the gaming enterprises with no burden on the Federal taxpayer. In that connection, I note that S. 555 and S. 1303 require the Federal Government to pay a substantial portion of the regulatory cost. We would prefer, however, that the entire cost of regulation be funded by fees levied against Indian gaming operations.

All other forms of gaming (such as pari-mutuel and casino gaming) could be economically beneficial, but the potential law enforcement problems are much greater than bingo. The cost of providing the necessary Federal and tribal regulation would be substantial and thus outweigh the economic benefits to the tribes. We recognize the importance of tribal sovereignty, but believe that either the states should be empowered to regulate such hard core gaming on Indian land or the approach in section 11(d) of S. 555 should be adopted to condition such gaming on a tribe's decision to consent to state jurisdiction of that gaming because of (1) the significant need for law enforcement oversight; and (2) of the significant additional law enforcement burden involved in Federal and tribal regulation of an area where the States are already regulating such gaming. In line with this view, We oppose the Federal and tribal regulation of such gaming proposed in section 12 of S. 1303. We also oppose making such gaming a Federal crime on Indian land where the tribe and the State choose to permit the activity.

We have received requests that land be taken into trust for gaming and other purposes. In some cases the land is away from the tribe's reservation and nearer population centers or highways in order to have greater access to non-Indian customers. Although we have the authority to do so, we intend to publish a proposed rule that we will not take off-reservation land in trust for the purpose of establishing a gaming operation. Either section 20(a) and

(b) of S.555, or section 4(a) and (b) of S. 1303 would be desirable statutory provisions to deal with this problem.

We urge the Congress to enact sound Indian gaming legislation because gaming enterprises in Indian country provides economic benefit to many of the tribes involved, especially those with no valuable natural resources or other significant sources of income. Tribes have used their gaming income for a variety of purposes relating to the welfare of their members, including supplementing activities that are financed by the federal Government. Examples include the Creek Nation's payment of contract medical expenses for tribal members; the Sycuan Band's use of funds for emergency loans, home repairs, fuel for homes, fire department equipment and operation, road repairs, and flood control repairs; the San Juan Pueblo's funding of a senior citizens program; the Fond du Lac Band's use of the funds to supplement the Head Start and other programs and to aid the construction of a health facility, and maintain and improve school and other public facilities and roads; and the Shakopee or Prior Lake Sioux Community's use of the funds to build a community center, dental clinic and health facility, and purchase a fire truck.

This concludes my statement and I will be pleased to answer any questions the Committee may have.

Survey of Indian Bingo Activity
July 1, 1987

B	I	N	G	O
1	24	45	60	75
15	29	41	47	70
14	25	FREE	50	61
9	30	31	49	63
6	21	37	58	69

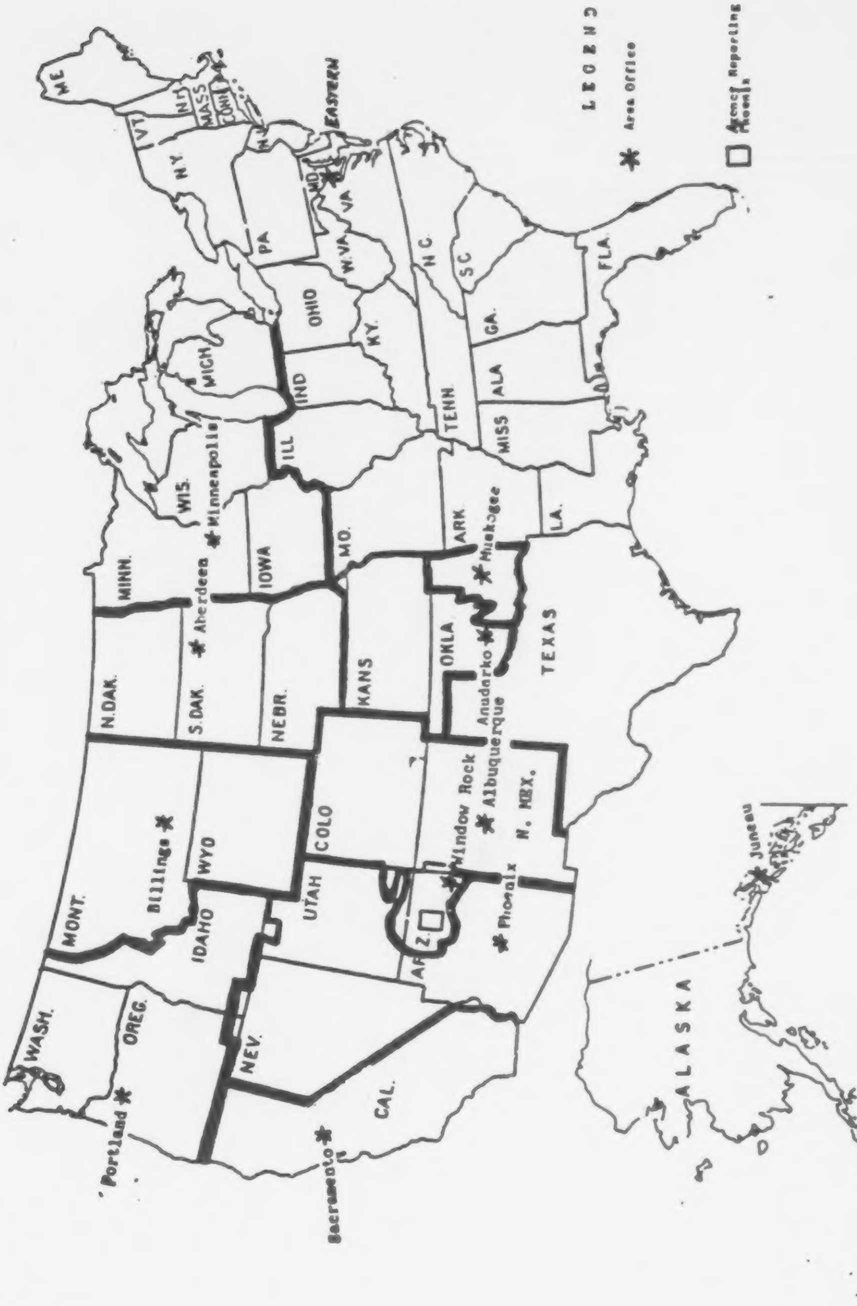
Prepared by the Bureau of Indian Affairs

AREA TOTALS

AREA	ANNUAL REVENUE GROSS
ABERDEEN	$5,076,083
ALBUQUERQUE	$1,200,000
ANADARKO	$2,887,428
BILLINGS	$339,381
EASTERN	$65,000,000
JUNEAU	-0-
MINNEAPOLIS	$40,450,000
MUSKOGEE	$18,776,029
NAVAJO	-0-
PHOENIX	UNKNOWN
PORTLAND	$15,000,000
SACRAMENTO	$106,900,000
GRAND TOTAL	$255,628,921

130 DM
Map

AREA ORGANIZATION--BUREAU OF INDIAN AFFAIRS


WASH.
OREG.
Portland
CAL.
Sacramento
NEV.
IDAHO
MONT.
Billings
WYO
UTAH
ARIZ.
Phoenix
COLO
Window Rock
Albuquerque
N. MEX.
N. DAK.
S. DAK.
Aberdeen
NEBR.
KANS
OKLA
Anadarko
Muskogee
TEXAS
MINN.
Minneapolis
IOWA
MO.
ARK.
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OHIO
KY.
TENN.
MISS
ALA
GA.
FLA.
SC
N.C.
VA
W.VA.
MD
PA
N.J.
N.Y.
VT
N.H.
MASS
CONN
ME
EASTERN
ALASKA
Juneau
LEGEND
Area Office
Agency Reporting to Phoenix

ABERDEEN AREA OFFICE

TRIBE	BINGO LOCATION	TRIBAL POPULATION	START-UP DATE	NAME OF CONTRACTOR	ANNUAL GROSS REVENUE
FLANDREAU	FLANDREAU, SD	449	2/84	TRIBALLY OPERATED	$474,083
WINNEBAGO	FLOWERS IS., NB	1,235	12/84	INVESTMENT FINANCE MGMT. INC. * 2	*1
YANKTON	WAGNER, SD	2,970	12/85	TRIBALLY OPERATED	$800,000
SISSETON	#1 WATERTOWN, SD	3,527	11/85	TRIBALLY OPERATED	$2,648,000
	#2 AGENCY VILLAGE, SD	3,527	3/86	TRIBALLY OPERATED	$540,000
FORT TOTTEN	ST. MICHAEL, ND	3,565	11/83	TRIBALLY OPERATED	$554,000
TURTLE MOUNTAIN	BELCOURT, ND	9,889	1983	TRIBALLY OPERATED	$60,000 (NET)
PINE RIDGE	PINE RIDGE, SD	19,246	1985	TRIBALLY OPERATED	*1

NOTES:
*1 INFORMATION UNAVAILABLE
*2 AGREEMENT IN LITIGATION
** TOTAL ANNUAL GROSS FOR ABERDEEN AREA IS $5,076,083

ALBUQUERQUE AREA OFFICE

TRIBE	BINGO LOCATION	TRIBAL POPULATION	START-UP DATE	NAME OF CONTRACTOR	ANNUAL REVENUE GROSS
SANDIA PUEBLO	BERNALILLO, NM	348	01/84	TRIBALLY OPERATED	$1,000,000
TESUQUE PUEBLO	SANTA FE. NM	400	12/84	INVESTMENT FINANCE MGMT. CO.	*1
SOUTHERN UTE TRIBE	IGNACIO, CO	1,100	1972	TRIBALLY OPERATED	*1
UTE MT. UTE TRIBE	TOWAOC, CO	1,500	08/84	TRIBALLY OPERATED	*1
SAN JUAN PUEBLO	SAN JUAN PUEBLO, NM	1,700	05/84	RAAD CORPORATION	$100,000
ISLETA PUEBLO	ISLETA, NM	3,400	09/86	BRITISH AMERICAN BINGO	$100,000
ACOMA PUEBLO	ACOMITA, NM	3,800	10/83	TRIBALLY OPERATED	*1

NOTES:
* 1 INFORMATION UNAVAILABLE
** TOTAL ANNUAL GROSS FOR ALBUQUERQUE AREA IS $1,200,000

ANADARKO AREA OFFICE

TRIBE	LOCATION BINGO	POPULATION TRIBAL	START-UP DATE	NAME OF CONTRACTOR	ANNUAL REVENUE GROSS
IOWA (OK)	PERKINS, OK	338	1985	CHARLES TILLMAN	$120,000
KAW	KAW CITY, OK	1,171	08/84	TRIBALLY OPERATED	$226,428
KICKAPOO	HORTON, KS	1,269	01/87	*5	*1
OTOE-MISSOURIA	RED ROCK, OK	1,559	11/83	TRIBALLY OPERATED	$1,200,000
IOWA (KANSAS)	HIAWATHA, KS	2,084	1984	TRIBALLY OPERATED	$365,000
SAC & FOX (OK)	STROUD, OK	2,133	1982	CHARLES TILLMAN	*1
ABSENTEE-SHAWNEE	SHAWNEE, OK	2,313	*4	THUNDERBIRD MGMT., INC.	
PRAIRIE BAND POTAWATOMI	MAYETTA, KS	3,710	04/87	SENECA-CAYUGA TRIBE	*1
W.C.D. *2	ANADARKO, OK	5,339	06/87	AL TESIO	*1
CHEYENNE-ARAPAHO	WATONGA, OK	8,984	1984	CHEYENNE-ARAPAHO	$376,000
CITIZEN BAND POTAWATOMI	SHAWNEE, OK	11,026	1983	EMCI *6	$600,000
K.C.A. *3	LAWTON, OK	18,207	09/86	COMANCHE TRIBE	*1
KIOWA	CARNEGIE, OK	8975	01/85	KIOWA TRIBE	*1
COMANCHE	LAWTON, OK	8289	06/83	COMANCHE TRIBE	*1
APACHE	ANADARKO, OK	943	06/87	APACHE TRIBE	*1

NOTES:

*1 INFORMATION UNAVAILABLE
*2 JOINT TRIBAL OPERATIONS OF THE WICHITA, CADDO & DELAWARE. POPULATION REFLECTS THE TOTAL OF ALL THREE TRIBES.
*3 THE KIOWA, COMANCHE AND APACHE TRIBE (K.C.A.) ARE INVOLVED IN ONE JOINT BINGO OPERATION IN ADDITION TO EACH OPERATING THEIR OWN SEPARATE BINGO HALL.
*4 NEAR COMPLETION
*5 RUN BY A TRIBAL MEMBER, BUT NOT TRIBALLY OPERATED
*6 APPEAL PENDING
** TOTAL ANNUAL GROSS FOR ANADARKO AREA IS $2,887,428

BILLINGS AREA OFFICE

TRIBE	BINGO LOCATION	TRIBAL POPULATION	START-UP DATE	NAME OF CONTRACTOR	ANNUAL GROSS REVENUE
CHIPPEWA CREE	ROCKY BOY'S BIA AGENCY, MT	3,626	1987	DR. ROBERT SWAN	*1
NORTHERN CHEYENNE	LAME DEER, MT	5,440	1984	JAMES ROBINSON	$189,381
BLACKFEET	BROWNING, MT	13,259	12/86	TRIBALLY OPERATED	$150,000

NOTES:

*1 INFORMATION UNAVAILABLE
** TOTAL ANNUAL GROSS FOR BILLINGS AREA IS $339,381

EASTERN AREA OFFICE

TRIBE	BINGO LOCATION	TRIBAL POPULATION	START-UP DATE	NAME OF CONTRACTOR	ANNUAL REVENUE GROSS
PEQUOT	LEDYARD, CT	344	1986	PENOBSCOT TRIBE	$10,000,000
ONEIDA	ONEIDA, NY	800	10/85	TRADITIONAL FACTION OF TRIBE	*1
TUSCARORA	NEAR NIAGARA FALLS, NY	975	06/77	J. ANDERSON	*1
SEMINOLE	#1 TAMPA, FL	1,609	1981	TRIBALLY OPERATED	$15,000,000
	#2 BIG CYPRESS, FL	1,609	1987	BIG CYPRESS MILLION DOLLAR BINGO	$10,000,000
	#3 HOLLYWOOD, FL	1,609	1980	TRIBALLY OPERATED	$15,000,000
	#4 BRIGHTON, FL	1,609	1980	TRIBALLY OPERATED	$5,000,000
POARCH CREEK	ATMORE, AL	1,835	1985	NORTH AMERICAN BINGO, INC.	*1
ST. REGIS MOHAWK	#1 NEAR HOGANSBURG, NY	3,558	1984	G. WHITE, B. COOK & E. MUNLEY	*1
	#2 NEAR HOGANSBURG, NY	3,558	1982	W. SEARS	*1
SENECA	#1 GOWANDA, NY	5,744	1982	TRIBALLY OPERATED	*1
	#2 SALAMANCA, NY	5,745	1982	TRIBALLY OPERATED	*1
CHEROKEE	CHEROKEE, NC	8,822	1982	TRIBALLY OPERATED	$10,000,000

NOTES:

*1 INFORMATION UNAVAILABLE
** TOTAL ANNUAL GROSS FOR EASTERN AREA IS $65,000,000

JUNEAU AREA OFFICE

TRIBE	BINGO LOCATION	TRIBAL POPULATION	START-UP DATE	NAME OF CONTRACTOR	ANNUAL GROSS REVENUE

* THERE ARE NO BINGO OPERATIONS

MINNEAPOLIS AREA OFFICE

TRIBE	BINGO LOCATION	TRIBAL POPULATION	START-UP DATE	NAME OF CONTRACTOR	ANNUAL REVENUE GROSS
SHAKOPEE MDEWAKANTON	PRIOR LAKE, MN	60	1982	TRIBALLY OPERATED	*1
PRAIRIE ISLAND COMMUNITY	WELCH, MN	304	02/84	REDWING AMUSEMENT CO.	*1
HANNAHVILLE COMMUNITY	WILSON, MI	407	1982	TRIBALLY OPERATED	$250,000
ST. CROIX	WEBSTER, WI	495	*2	TRIBALLY OPERATED	*1
LOWER SIOUX COMMUNITY	MORTON, MN	620	1984	GMT CORP.	*1
FOREST POTAWATOMI	CRANDON, WI	683	1983	TRIBALLY OPERATED	$250,000
BAY MILLS	BRIMLEY, MI	840	1982	TRIBALLY OPERATED	$1,000,000
SAGINAW CHIPPEWA TRIBE	MT. PLEASANT, MI	861	1981	TRIBALLY OPERATED	$1,000,000
SAC & FOX TRIBE	TAMA, IA	1,005	*2	TRIBALLY OPERATED	*1
SOKAOGON	CRANDON, WI	1,093	1983	TRIBALLY OPERATED	*1
STOCKBRIDGE MUNSEE	BOWLER, WI	1,400	1983	TRIBALLY OPERATED	$250,000
LAC DU FLAMBEAU BAND	LAC DU FLAMBEAU, WI	1,485	1982	TRIBALLY OPERATED	*1
MILLE LACS	ONAMIA, MN	2,177	11/82	TRIBALLY OPERATED	*1
GRAND TRAVERSE BAND	SUTTONS BAY, MI	2,277	05/84	TRIBALLY OPERATED	$5,000,000
LAC COURTE OREILLES	HAYWARD, WI	2,279	10/82	TRIBALLY OPERATED	$5,000,000
KEWEENAW BAY COMMUNITY	BARAGA, MI	2,457	05/81	TRIBALLY OPERATED	$5,000,000
RED CLIFF BAND	BAYFIELD, WI	2,706	09/83	TRIBALLY OPERATED	$250,000
FOND DU LAC	CLOQUET, MN	2,826	01/81	FOND DU LAC GAMING COMM.	*1
WISCONSIN WINNEBAGO	TOMAH, WI	3,174	11/83	TRIBALLY OPERATED	$1,000,000
BAD RIVER	ODANAH, WI	3,575	1983	TRIBALLY OPERATED	$250,000
LEECH LAKE	CASS LAKE, MN	6,039	05/83	TRIBALLY OPERATED	$5,000,000
MENOMINEE INDIAN TRIBE	KESHENA, WI	6,289	10/81	TRIBALLY OPERATED	$5,000,000
RED LAKE BAND OF CHIPPEWA	RED LAKE, MN	8,104	05/85	TRIBALLY OPERATED	$5,000,000
ONEIDA	ONEIDA, WI	8,838	10/76	TRIBALLY OPERATED	*1
SAULT STE MARIE TRIBE	SAULT STE MARIE, MI	15,154	1982	TRIBALLY OPERATED	$5,000,000
WHITE EARTH	WHITE EARTH MN	19,660	04/84	TRIBALLY OPERATED	$1,200,000

NOTES:

*1 INFORMATION UNAVAILABLE
*2 HAS NOT STARTED OPERATION AS YET
** TOTAL ANNUAL GROSS FOR MINNEAPOLIS AREA IS $40,450,000

MUSKOGEE AREA OFFICE

TRIBE	BINGO LOCATION	TRIBAL POPULATION	START-UP DATE	NAME OF CONTRACTOR	ANNUAL GROSS REVENUE
EASTERN SHAWNEE	SENECA, MO	1,400	12/84	TRIBALLY OPERATED	*1
THLOPTHLOCCO (CREEK)	CLEARVIEW, OK	1,500	02/81	TRIBALLY OPERATED	$125,276
QUAPAW	QUAPAW, OK	2,000	06/86	INDIAN DEV. OPPORT. CORP.	$240,000
SENECA-CAYUGA	GROVE, OK	2,300	12/82	TRIBALLY OPERATED	*1
UNITED KEETOOWAH	TAHLEQUAH, OK	5,978	04/86	CLIFFORD TURK & J.D. JOHNSON	$100,000
SEMINOLE	WEWOKA, OK	8,000	12/86	LMWR, INC.	*1
CHICKASAW 1	ADA, OK	20,000	3/82	TRIBALLY OPERATED	$635,592
2	SULPHUR, OK	20,000	11/84	TRIBALLY OPERATED	$175,598
CREEK 1	TULSA, OK	25,386	11/84	INDIAN COUNTRY USA, INC.	$15,802,123
2	BRISTOW, OK	25,386	10/86	TRIBALLY OPERATED	$571,352
3	OKMULGEE, OK	25,386	2/87	TRIBALLY OPERATED	$1,126,088
CHOCTAW	DURANT, OK	40,000	*2	INVESTMENT RESOURCES, INC.	

NOTES:

*1 INFORMATION UNAVAILABLE
*2 HAS NOT STARTED OPERATION YET
** TOTAL ANNUAL GROSS FOR MUSKOGEE AREA IS $18,776,029

NAVAJO AREA OFFICE

TRIBE	BINGO LOCATION	TRIBAL POPULATION	START-UP DATE	NAME OF CONTRACTOR	ANNUAL GROSS REVENUE

* THERE ARE NO BINGO OPERATIONS

PHOENIX AREA OFFICE

TRIBE	BINGO LOCATION	TRIBAL POPULATION	START-UP DATE	NAME OF CONTRACTOR	ANNUAL REVENUE GROSS
YAVAPAI-PRESCOTT	PRESCOTT, AZ	93	08/84	TRIBALLY OPERATED	*1
MOHAVE-APACHE	FOUNTAIN HILLS, AZ	430	09/84	MID AMERICA TRUST, INC.	*1
COCOPAH TRIBAL COUNCIL	YUMA, AZ	800	06/87	DICK ROSE	*1
PASCUA YAQUI TRIBE	TUCSON, AZ	2,200	01/83	YAQUI BINGO, LTD. *2	*1
QUECHAN TRIBE	YUMA, AZ	3,150	06/83	WESTERN ENTERTAINMENT BINGO CO	*1
TOHONO O'ODHAM NATION	SAN XAVIER DIST./TUCSON, AZ	15,844	04/84	BINGO MANAGEMENT CO.	*1

NOTES:

*1 INFORMATION UNAVAILABLE
*2 LEASE DISPUTE IN PROCESS-NO ESTIMATE OF WHEN BINGO MAY REOPEN

PORTLAND AREA OFFICE

TRIBE	BINGO LOCATION	TRIBAL POPULATION	START-UP DATE	NAME OF CONTRACTOR	ANNUAL REVENUE GROSS
SHOALWATER BAY	TOKELAND, WA	123	07/84	EUGENE LANDERY *3	*1
CHEHALIS	NO LOCATION YET	430	*2	JIM BELL ENTERPRISES, INC.	*1
LOWER ELWHA	PORT ANGELES, WA	466	06/75	TRIBALLY OPERATED	*1
MAKAH	NEAH BAY, WA	571	06/83	TRIBALLY OPERATED	*1
SWINOMISH	LACONNER, WA	600	06/85	PRAIRIE PACIFIC ENTERPRISES	*1
MUCKLESHOOT	AUBURN, WA	783	07/85	BRITISH AMERICAN BINGO, INC.	*1
NOOKSACK	NO LOCATION YET	956	*2	INDIAN DEVELOPMENT OPPORT. CORP.	*1
PUYALLUP	TACOMA, WA	1,200	UNKNOWN	UNKNOWN	*1
UMATILLA	PENDLETON, OR	1,357	02/83	TRIBALLY OPERATED	*1
METLAKATLA	METLAKATLA, AK	1,450	1977	TRIBALLY OPERATED	*1
TULALIP	MARYSVILLE, WA	1,598	06/84	TRIBALLY OPERATED	$15,000,000
SILETZ	SILETZ, OR	1,948	10/84	TRIBALLY OPERATED	*1
LUMMI	NO LOCATION YET	2,888	*2	INDIAN COUNTRY U.S.A.	*1
SHOSHONE-BANNOCK	FORT HALL, ID	3,287	1985	TRIBALLY OPERATED	*1

NOTES

*1 INFORMATION UNAVAILABLE
*2 HAS NOT STARTED OPERATION AS YET
*3 RUN BY TRIBAL MEMBER BUT NOT TRIBALLY OPERATED
** TOTAL ANNUAL GROSS FOR PORTLAND AREA IS $15,000,000

SACRAMENTO AREA -OFFICE

TRIBE	BINGO LOCATION	TRIBAL POPULATION	START-UP DATE	NAME OF CONTRACTOR	ANNUAL GROSS REVENUE
CHICKEN RANCH RANCHERIA	JAMESTOWN, CA	6	05/86 *1	CHICKEN RANCH BINGO MGMT.	$9,200,000
CABAZON BAND	INDIO, CA	25	05/83 *1	TRIBALLY OPERATED	$5,000,000
JACKSON RANCHERIA	JACKSON, CA	27	1984 *1	CALIFORNIA BINGO	$6,000,000
RUMSEY INDIAN RANCHERIA	BROOKS, CA	50	12/84	SOVEREIGN HOLDINGS LTD.	$9,000,000
COLUSA RANCHERIA	COLUSA, CA	68	08/86	TRIBALLY OPERATED	$1,000,000
SAN MANUEL BAND	SAN BERNARDINO, CA	73	07/86	WESTERN ENTERTAINMENT CORP.	$9,000,000
SYCUAN BAND	EL CAJON, CA	75	11/83	PAN AMERICAN COMPANY	$17,000,000
TABLE MOUNTAIN BAND	FRIANT, CA	95	01/88	MILLERTON BINGO	*1
ROBINGSON RANCHERIA	NICE, CA	177	01/87	BORENO, INC.	$2,400,000
VIEJAS BAND	ALPINE, CA	187	*2	EAGLE MISSION, INC.	
SANTA YNEZ	SANTA YNES, CA	213	07/83 *1	THE ASSOCIATES	$4,000,000
SANTA ROSA RANCHERIA	LEMOORE, CA	345	11/83 *1	BRITISH AMERICAN BINGO, INC.	$5,300,000
BARONA BAND	LAKESIDE, CA	440	12/83 *1	BINGO ENTERPRISE, INC.	$3,000,000
SOBOBA BAND	HEMET, CA	691	02/85 *1	NATIVE AMERICAN MGMT. ASSOC.	$11,000,000
MORONGO BAND	BANNING, CA	979	04/83 *1	CBA DEVELOPMENT CO., INC.	$24,000,000
BISHOP TRIBE	BISHOP, CA	1,016	1984	TRIBALLY OPERATED	$300,000
HOOPA TRIBE	HOOPA, CA	1,913	04/85 *1	TRIBALLY OPERATED	$700,000

NOTES:

*1 ORIGINALLY OPENED UNDER A DIFFERENT MANAGEMENT GROUP
*2 NOT OPEN
** TOTAL ANNUAL GROSS FOR SACRAMENTO AREA IS $106,900,000

PREPARED STATEMENT OF VICTORIA TOENSING

I welcome the opportunity to appear today to present the views of the Department of Justice on legislation to regulate gaming on Indian lands. We appreciate the continuing deep interest of this Committee in fashioning appropriate legislation to regulate tribal gaming and hope that we will be able to work with you and your staff closely in the weeks ahead to develop a bill that will properly balance the competing interests involved in this difficult issue.

BACKGROUND

At the outset, I should note that the Administration submitted its own proposed resolution of this problem to the Congress in 1986 as S. 2557 of the 99th Congress. By the time our bill was submitted, congressionally-initiated measures were already relatively far along in processing. We believed at the time, and continue to believe, that our bill was a balanced proposal which sought to permit tribes to continue the forms of gaming which were then operating but under a regulatory structure sufficiently strong to provide reasonable protection against abuse. It is our present view, however, that rather than resubmitting our bill at this time, we should work with this and other appropriate Committees of the Congress to develop an agreeable solution. As I will note more fully in a moment, however, the fact that we have not formally resubmitted our bill at this time should not be seen as an abandonment of the basic principles and concepts which motivated this proposal.

GUIDING CONSIDERATIONS

Two basic considerations guide us in our approach to this issue. First, the Department of Justice is the nation's chief law enforcement agency and, as such, we are duty bound to oppose any gaming regulatory measure which, in our judgment, cannot reasonably be expected to curb the potential for the types of criminal activity and abuse which have historically been so closely associated with gaming. For this reason, therefore, we cannot and will not endorse legislation which proposes to authorize tribes to engage in pari-mutuel and casino gaming subject only to a weak federal regulatory structure which cannot realistically be expected to control abuse.

I should note that the Department of Justice has had first-hand experience with organized crime infiltration of gaming operations and that we thus know the potential for such activity.

We have also, in recent years, prosecuted cases in which laundering of illegally derived money was conducted through gaming operations. Because gaming involves such large volumes of cash, it is a veritable magnet for all forms of criminal activity, in addition to those individuals who would like to use gaming operations as part of a larger money laundering scheme. The law enforcement aspects of this issue, therefore, should be kept foremost in mind at all times.

We respectfully suggest that S. 1303 as presently drafted proposes such an ineffective regulatory structure and we are not optimistic that an acceptable compromise can be developed if S. 1303 is to serve as the drafting vehicle. We will supply the Committee with a paper which details our objections to S. 1303, most of which are already well known to the Committee.

Second, this Department of Justice assigns great importance to principles of federalism which, in our view, require respect for the authority of the states, to the greatest extent possible, to regulate activities within their borders. We recognize that our federalism interests will often be at odds with the important principle of tribal sovereignty, but we are optimistic that these competing principles can be balanced appropriately, a balance we do not find in S. 1303.

TOWARD A WORKABLE COMPROMISE

We believe that Chairman Inouye's bill, S. 555, represents a vehicle for a possible solution. What we will do now is set forth some general comments about S. 555, noting the basic areas of agreement and areas requiring further analysis and discussion.

S. 555

The bill contains several important features which we support:

1. Appropriate Handling of Class III Gaming. Horse and dog tracks, pari-mutuel wagering, casinos and other Class III gaming activities as defined in S. 555 require rigorous regulation in order to protect against criminal activities and other abuses. In fact, such gaming operations are so attractive to the criminal element that no regulatory scheme can provide fail-safe protection against abuse.

If such trouble-prone enterprises are to be sanctioned, therefore, an appropriate regard for law enforcement considerations suggests that they be operated subject to the regulatory systems which have been established by those states which permit such activities within their borders. S. 555 so provides. We believe that the approach of S. 555 to Class III gaming represents a proper resolution of the competing considerations of tribal sovereignty, state sovereignty, and law enforcement.

Although S. 555 defines Class III gaming as all other forms of gaming not included in the definitions of Class I and II gaming, a definition which would include some casino games, the treatment of Class III gaming is most important with respect to pari-mutuel wagering operations, such as horse and dog tracks and jai-alai. It appears that S. 555 is not intended to allow the tribes to run casinos in contravention of state laws. We strongly concur in that position and think it should be more clear.

Casinos

As you know, Mr. Chairman, subsection 11(d)(1) of S. 555 provides that, except as provided in subsection 11(d)(2), Class III gaming is unlawful under 18 U.S.C. 1166. (That new section in title 18 is added by section 23 of the bill and provides in essence that state licensing, regulatory and prohibitory laws pertaining to the type of gaming defined as Class III, including criminal sanctions applicable thereto, are assimilated as federal statutes and shall be enforced by the United States.)

However, subsection 11(d)(2) provides that a gaming activity on Indian lands "that is otherwise legal within the State where such lands are located" is exempt from the operation of 11(d)(1) if the tribe transfers criminal and civil jurisdiction over the enterprise to the State. The "otherwise legal within the State" phrase would prevent tribes in most States from transferring jurisdiction over casino gaming since casino gaming is legal in only a few States. We note, however, that subsection 11(d)(2) would arguably allow tribes in Nevada, and possibly tribes in States where charitable organizations are allowed to run "Las Vegas Nights" with casino games for small cash prizes, to ask the State to take jurisdiction over them for the purposes of unlimited casino gaming. We hope this is not the intent of subsections 11(d)(1) and (2), and think that the provision should be clarified to ensure that casino gaming is conducted only in accordance with state law. We note, moreover, that casino gaming on Indian land has been squarely held to violate 18 U.S.C. 1955 which makes it an offense to conduct a gambling business "in violation of a law of a State or political subdivision" (see United States v. Farris, 624 F.2d 890 (9th Cir., 1980)), and do not read S. 555 to change the holding in that case.

Pari-Mutuel Wagering

The chief impact of S. 555's treatment of Class III gaming is on pari-mutuel operations. The thrust of the scheme is that a tribe wishing to conduct a pari-mutuel operation in a State where such an operation is legal -- for example, thoroughbred horse racing in a state where pari-mutuel wagering on thoroughbreds is legal -- would ask the Secretary of the Interior to consent to a transfer of "all civil and criminal jurisdiction, except for taxing authority, pertaining to the licensing and regulations of gaming over the proposed gaming enterprise to the State." It is provided that the transfer shall empower the State with the authority to assess the tribe or its management contractor the State's costs of investigating, licensing, and regulating the enterprise, but may not exceed its actual costs. In practical terms, this means that if a State imposes a tax on the pari-mutuel "handle" -- the total of all money wagered -- at thoroughbred tracks of nine percent but its costs of licensing and inspecting the tribe's track comes to only, say, two percent, the State may not take and the tribe gets to retain the additional seven percent.

A State that concludes this is unfair -- for example, if it does not want to license and inspect tribal thoroughbred racing that generates no revenue for the State's treasury -- need not accept the proffered transfer of jurisdiction. If a tribe believes such a refusal on the part of the State to accept jurisdiction violates a legal right of the tribe, such as the right generally to be free of State taxing authority, it is apparently contemplated that the tribe will bring suit against the State. Subsection 11(d)(4) provides that for purposes of subsection 11(d) "an Indian tribe shall be considered a person and shall have the same rights and remedies that any person or citizen of the United States has, and any State or Federal court of competent jurisdiction shall have jurisdiction and authority to issue such orders as may be necessary to enforce the rights granted under this subsection." Since this provision appears merely to state existing law, it is unobjectionable. We read this provision as consistent with such law, including 28 U.S.C. 1362, which provides that federal district courts "shall have original jurisdiction of all civil actions, brought by any Indian tribe or band with the governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, law, or treaties of the United States."

2. Appropriate Recognition of Existing Tribal Games. S. 555 proposes to exempt certain traditional games from any regulation (the Class 1 Games) and expands permitted, but regulated, games beyond the game of bingo as described in the Administration's bill (the Class 2 Games). We do not oppose these exemptions or expansions in principle but should note that to the extent any federal regulatory scheme is unduly weak or ineffective to prevent infiltration and abuse by organized crime, it might be necessary to consider some form of dollar limitations on prizes as an alternative to such regulation.

3. Other Important Features. S. 555 requires that the profits from tribal gaming operations are to be applied to the benefit of the tribe rather than the personal enrichment of individual tribal members. It provides, consistent with 25 U.S.C. 81, for continued review of, and limitations upon, management contracts, one of the most likely areas of abuse.

And it sets out strong federal criminal and civil penalties for crimes and abuses associated with tribal gaming operations. We heartily support these aspects of the bill.

AREAS FOR DISCUSSION

There are two critical respects in which S. 555 differs from the Administration bill: the nature of the Commission which will have regulatory responsibility for the Class II games, and the scope of power of that Commission.

The commission structure as proposed in S. 555 raises important administrative law questions. More specifically, S. 555 as presently drafted contemplates a five-member commission, the chairman of which is appointed by the President with the advice and consent of the Senate. The remaining four members are to be appointed by the Secretary of Interior, yet the votes of the four secretarial appointees apparently have the same weight as that of the Presidential appointee. There is no requirement for law enforcement experience. We suggest that further consideration be given to our proposal last year that the commission consist of three members, two appointed by the Secretary of Interior and one by the Attorney General. To the extent that it is felt that tribal representation on the commission should be guaranteed by statute, we could accept a requirement that at least one of the three commissioners be a member of a recognized tribe, or two of five, if a five member Commission is to be utilized instead.

More important, it is essential that this Commission have the fundamental authority necessary to regulate gaming effectively, and such regulatory authority must therefore include some form of pro-active powers like the authority to exclude certain known criminals from gaming. At large dollar levels, the possibility of organized crime infiltration is just as great with Class II games as Class III games. S. 555, while setting forth general and some specific standards, relies primarily on self-regulation by the tribes on a subject area that our states have often found difficulty in regulating effectively. We would like to work closely with you to develop a regulatory scheme combining the best features of S. 555 and our bill. Further, aside from these concerns about the Commission, I understand that OPM would raise objections to the exemption of Commission staff from civil service pay requirements under Sec. 8 of S. 555.

CONCLUSION

In sum, Mr. Chairman, we recognize that the law enforcement community is sometimes perceived as inflexible on the subject of gambling. This reflects, however, the very difficult task which law enforcement faces. Most law enforcement professionals are opposed to gambling because their experience has shown the many abuses and crimes associated with gambling. At the same time, we recognize that many in society do not share our view on gaming and that the trend among increasing numbers of states is to turn to gaming as a means of raising public revenue. In any event, I cannot emphasize sufficiently that wherever gaming is conducted, it is carried out under a very strong regulatory scheme, and even the most sophisticated regulatory structure is no absolute guarantee against abuses. For this reason, we are prepared to work with you in an effort to address this Indian gaming issue. For some it may be tempting to cast aside law enforcement considerations in favor of quick short-term solutions to this complex issue, but we hope that you will take advantage of the experience and wisdom which exists in both the Federal and State law enforcement community. I believe that we can, working together, produce legislation which will perform the difficult task of permitting tribal gaming operations in a manner that will effectively protect the public interest in an ordered society.

Thank you.

PREPARED STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR FROM ARIZONA

EARLIER THIS MONTH I INTRODUCED S. 1303, A BILL TO ESTABLISH FEDERAL STANDARDS AND REGULATIONS FOR THE CONDUCT OF GAMING ON INDIAN RESERVATIONS AND LANDS. THIS BILL IS IDENTICAL TO H.R.2507 WHICH WAS INTRODUCED BY CONGRESSMAN MORRIS UDALL IN THE HOUSE ON MAY 21.

S. 1303 AND S. 555 AGREE ON CLASS I GAMES AND VIRTUALLY AGREE ON CLASS II GAMING ACTIVITIES. WHILE THE BILLS DIFFER AS TO THE STANDARDS AND REGULATIONS PLACED ON CLASS II GAMES, I BELIEVE THESE DIFFERENCES CAN AND WILL BE WORKED OUT. THE FUNDAMENTAL DIFFERENCE IS OVER CLASS III GAMING ACTIVITES.

S. 555 WOULD PROHIBIT CLASS III ACTIVITIES UNLESS A TRIBE AGREED TO TRANSFER ALL CIVIL AND CRIMINAL JURISDICTION TO THE STATE FOR REGULATION. S. 1303 PERMITS A TRIBE TO OPERATE A CLASS III GAME WHERE THE STATE PERMITS THAT PARTICULAR GAMING ACTIVITY AND IT IS NOT PROHIBITED IN INDIAN COUNTRY BY FEDERAL LAW. IF A TRIBE CHOOSES TO OPERATE CLASS III GAMES, THESE ACTIVITES WOULD HAVE TO ABIDE BY THE IDENTICAL REGULATORY SCHEME PROVIDED FOR THAT SAME ACTIVITY BY THE STATE, EXCLUDING ANY TAX, ASSESSMENT, FEE, OR OTHER FINANCIAL BURDEN. IN ADDITION, S. 1303 WOULD REQUIRE, AS DOES S. 555, THAT ALL NET REVENUES COULD ONLY BE USED FOR : TRIBAL GOVERNMENTAL OPERATIONS, THE GENERAL WELFARE OF THE

TRIBE AND ITS MEMBERS, OR TO PROMOTE ECONOMIC DEVELOPMENT.

THUS, THE REGULATIONS AND STANDARDS ESTABLISHED UNDER S. 1303, PROVIDE NO SPECIAL ADVANTAGE FOR INDIANS OVER NON-INDIAN GAMING INTERESTS. THE REGULATIONS CONTAINED IN S. 1303 ARE IN PLACE TO ADDRESS A VERY LEGITIMATE CONCERN: THE POTENTIAL FOR INCREASED CRIMINAL ACTIVITY. THIS IS A CONCERN OF STATES AND TRIBES. AS MANY OF US ARE AWARE, TRIBES HAVE UTILIZED THEIR GAMING PROFITS TO SUPPORT THEIR TRIBAL GOVERNMENTS AS WELL AS THE HEALTH, EDUCATION, SOCIAL AND ECONOMIC NEEDS OF THEIR MEMBERS. NO ONE NEEDS TO EXPLAIN TO TRIBES THE IMPORTANCE OF PROTECTING THESE REVENUES FROM CRIMINAL ELEMENTS. NO ONE NEEDS TO EXPLAIN TO TRIBES THE CRITICAL ROLE THESE REVENUES HAVE PLAYED IN LIGHT OF THE REDUCTIONS IN FEDERAL APPROPRIATIONS TO INDIAN PROGRAMS.

IT HAS BEEN SUGGESTED BY STATES AND THE NON-INDIAN GAMING INDUSTRY THAT IF CLASS III GAMES ARE ALLOWED, TRIBES WOULD RUSH INTO SETTING UP CLASS III GAMES. THERE IS NO EVIDENCE THAT I AM AWARE OF TO SUPPORT THESE STATEMENTS. I BELIEVE THAT THOSE TRIBES NOW INVOLVED IN CLASS II GAMES WILL CHOOSE TO CONTINUE OPERATING CLASS II GAMES. YES, THERE WILL BE TRIBES WHO WILL SEEK TO OPERATE CLASS III ACTIVITIES BUT THESE TRIBES WILL HAVE TO MAKE SOME HARD DECISIONS. CAN THEY COMPETE WITH ESTABLISHED NON-INDIAN GAMES OR, WITH ANOTHER TRIBAL CLASS III OPERATION? WILL THEY BE ABLE TO RECAPTURE THEIR INVESTMENT? WILL THEY BE ABLE TO FIND A MANAGEMENT CONTRACTOR WILLING TO MAKE AN INVESTMENT FOR A CLASS III OPERATION? A MANAGEMENT CONTRACTOR WHO MUST FIRST MEET THE REGULATIONS AND STANDARDS FOR SUCH CONTRACTS WHICH ARE--

REMEMBER--IDENTICAL TO THE STATE REGULATIONS FOR THAT SAME GAMING ACTIVITY.

ONE IMPORTANT ASPECT OF THIS DEBATE WHICH HAS RECEIVED LITTLE ATTENTION IS THE NON-INDIAN GAMING INDUSTRIES FEAR OF A NEW SOURCE OF ECONOMIC COMPETITION. TRIBES ARGUE THAT PLACING THEM UNDER STATE JURISDICTION WILL ALL BUT ASSURE THAT THEY WILL BE UNABLE TO COMPETE. THIS MAY WELL BE THE REAL REASON THAT THE NON-INDIAN GAMING INDUSTRY IS PUSHING SO HARD FOR STATE JURISDICTION OVER CLASS III GAMES. FEAR OF INCREASED CRIMINAL ACTIVITY IS ONE THING; FEAR OF ECONOMIC COMPETITION IS ANOTHER. I CANNOT SUPPORT ANY LEGISLATION WHICH WILL UNILATERALLY IMPOSE STATE JURISDICTION OVER THE ACTIVITES OF TRIBAL GOVERNMENTS.

FINALLY, SOME MEMBERS OF CONGRESS, INCLUDING MYSELF, HAVE STATED THAT THEY WOULD RATHER SEE TRIBES INVOLVED IN OTHER REVENUE RAISING ACTIVITIES. WE MUST ASK OURSELVES, HOWEVER, IF WE HAVE PROVIDED TRIBES WITH SUFFICIENT OPPORTUNITIES TO GENERATE REVENUE AND THEREBY ALLOW TRIBES TO INCREASE THEIR ECONOMIC SELF-SUFFICIENCY? MY ANSWER IS NO, WE HAVE NOT DONE ENOUGH. ONCE THE GAMING DEBATE IS OVER, I CHALLENGE THOSE INVOLVED IN THIS DEBATE TO DEVOTE OUR ENERGIES TOWARD INCREASING LONG-TERM ECONOMIC DEVELOPMENT OPPORTUNITIES FOR INDIAN TRIBES.

PREPARED STATEMENT OF WILLIAM J. HOULE

I wish to thank the Committee for the opportunity to appear and testify on the different versions of the proposed Indian Gaming Regulatory Act.

SUMMARY OF NIGA POSITION

Although in many ways the various bills before Congress are very similar, there are important differences between the bills. A most critical difference is the treatment of Class III gaming. This is the issue that resulted in protracted conflict over H.R. 1920 in the 99th Congress. The National Indian Gaming Association's position on this issue was most recently related to Chairman Inouye in a April 27, 1987 letter which stated "Class III gaming should be licensed and regulated by the federal Commission." Our position has not changed; we are opposed to any State jurisdiction over Indian gaming. H.R. 2507 and its companion bill, S.1303 come the closest to our view on this issue. There are a number of legal, policy, and factual reasons underlying our position which we will detail in latter portions of our testimony.

There also are other important differences between the bills, issues such as costs, definitions, management contracts, and composition of the Commission. We support the provisions of S. 555 on many of these issues. In a few areas we find all of the bills deficient and make specific recommendations for the Committee's consideration.

BACKGROUND

It is important first to tell you something about National Indian Gaming Association (NIGA), the role we have played and to address what we perceive to be misconceptions concerning the tribal role in gaming. I am the Chairman of the National Indian Gaming Association, we are an organization made up of over twenty Indian tribes that are actively involved in Indian Gaming. My own tribe is the Fond du Lac Band of Lake Superior Chippewa Indians; the Tribe has a joint venture 1000 person capacity Bingo operation in Duluth, Minnesota and tribally operated 500 person capacity gaming enterprise at Cloquet on the reservation. Some of the other members of the Association are the Tulalip Tribe (Washington) which has a tribally managed 1400 person capacity gaming enterprise; the Seminole Tribe of Florida, which has 3 gaming enterprises, with capacities of 1200, 1200, and 5000 persons respectively, all operated with managment contracts; the Saginaw Chippewa Tribe (Michigan) which has tribally managed gaming enterprise with a 400 person capacity; the Oneida Tribe of Wisconsin which has a tribally managed 1200 person capacity gaming enterprise; the Sault Ste.

Marie Tribe (Michigan) which has a tribally managed 1000 person capacity gaming enterprise; the Shakopee Mdenakanton Sioux Community (Michigan) which has a 1000 person capacity tribally managed gaming enterprise; The Creek Nation of Oklahoma, which has 2 gaming operations with capacities of 450 and 1150 persons respectively, operated with managment contracts; the Seneca-Cayuga Tribe (Oklahoma) which has a 500 person capacity tribally managed gaming enterprise; the Puyallup Tribe (Washington) which has 3 individually operated games under tribal license; the Bristol Indian Community (Oklahoma) which is also part of the Creek Nation, has a tribally managed 300 person capacity gaming enterprise; the Hannahville Tribe (Michigan) which has a tribally managed 500 person capacity gaming enterprise; the Kickapoo Tribe (Kansas) which has a tribally managed 300 person capacity gaming enterprise; the Deleware Tribe of Oklahoma which has a 1200 person capacity gaming enterprise, operated with a management contract; the Pascua Yaqui Tribe (Arizona) which has a 1000 person capacity gaming enterprise, operated with a management contract; the Iowa Tribe of Oklahoma which has a 500 person capacity gaming enterprise, operated with a management contract; and the Lac Du Flambeau Tribe (Wisconsin) which has a tribally managed 600 person capacity gaming enterprise.

The National Indian Gaming Association (NIGA) is an outgrowth of efforts that began in the 98th Congress by the BIA to consult with tribes in developing its position on Indian gaming. A so-called Indian Gaming Task Force was set up. The gaming tribes soon found themselves at odds with the BIA and ultimately set up our own organization. Although NIGA endeavors to consult and coordinate with other gaming tribes, as well as non-gaming tribes, we do not claim to speak for all gaming tribes. As the record demonstrates, there are many viewpoints in Indian country on the desirability of any legislative approach.

Our membership, as described above, is geographically divergent and represents different size games and different types of games; we are however, exclusively composed of tribes that have bingo or card game operations. To date, NIGA has supported a legislative approach for Indian Gaming. In the 99th Congress, we supported Chairman Udall's bill H.R. 1920 as reported by the House Interior and Insular Affairs Committee. We actively opposed the Congressman Coehlo's efforts to place Class III gaming under State control and regulation.

We reluctantly supported the moratorium compromise on Class III gaming that was eventually negotiated between Chairman Udall and Congressman Coehlo. H.R. 1920, as so amended, then was passed by the House of Representatives. Shortly thereafter, an Administration bill, S. 2557, was introduced in the Senate by Senator Laxalt. S. 2557 would have created a 3 member Commission dominated by federal bureaucrats who would have broad and unfettered power over Indian gaming; Class III gaming would have tranfered to State control. Hearings were held in the Senate on

H.R. 1920, S. 902, Senator DeConcini's bill which was similar to H.R. 1920, and S.2557. NIGA strongly opposed the Administration bill and supported the thrust of H.R. 1920 and S. 902.

At about the same time, June 10, 1986, the United States Supreme Court determined that it would review the decision of the 9th Circuit in California et al. v. Cabazon Band of Mission Indians, et al. Up to that point, all federal courts to address the issue had held that Tribes were able to operate gaming enterprises free from state jurisdiction. The Supreme Court had previously declined to review the decisions of the two separate federal circuit courts that had upheld tribal gaming rights. Given this legal setting, the predominant, though not universal opinion, was that there was a significant danger of the Supreme Court reversing Cabazon.

The pendency of a Supreme Court decision strongly influenced the course of events in the second session of the 99th Congress. NIGA, along with other tribes and organizations, engaged in extensive negotiations with "the other side" --gaming industry representatives and representatives of the States.

These discussions were protracted and extremely conflicted. An underlying problem that has never been fully resolved, is the completely unfounded viewpoint that Indian gaming is unregulated gaming. This viewpoint does not recognize that tribes are governments, and capable governments at that. In spite of the years of scandals relating to state regulated gaming, e.g. the extensive indictments of government officials following the introduction of Jai Alai in Connecticut, States are presumed to be inherently competent. On the other hand, Tribes are assumed to be incapable of controlling their gaming. The fact that Tribes are running a nationwide gaming industry involving some 140 games, an industry that will soon enter its second decade, with relatively minimal problems relative to criminal activity and apparently no problems relative to organized crime, seems to have no impact on assumptions or presumptions of tribal competency.

In any event, the waning days of the 99th Congress produced a extremely fragile compromise. NIGA with the uttermost reluctance, and only in face of what appeared to be a probable Supreme Court defeat, did not oppose the compromise. This compromise, Senator Andrews amendment in-the-nature-of-a-substitute to H.R. 1920, which barred Class III gaming, but permitted State jurisdiction if a tribe consented, failed to pass the Senate. Apparently sure of a Supreme Court victory, the Nevada Resort Association and the Gaming Industry Association of Nevada spearheaded opposition to the bill.

When the 99th Congress began and the Supreme Court still had not decided Cabazon, discussions and negotiations to find a legislative solution continued. To some extent those efforts are imperfectly reflected in S. 555 and H.R. 964.

On February 25, 1987, the Supreme Court of the United States, in surprise 6-3 opinion squarely upheld the rights of tribes to operate gaming where, such gaming is not criminally prohibited by state law, free from any state control. It is important to note that two forms of gaming were before the Court in the consolidated Cabazon case: the Cabazon Band operates a card parlor; and the Morongo Band of Mission Indians operates a large scale Bingo enterprise.

At this point in the legislative process, six hearings have been held and an extensive record exists. There are several points about which all sides seem agree, primarily among these is the employment and economic benefit provided by tribal gaming to reservation and adjacent communities. There also seems to be general agreement that this economic benefit is sorely needed and has not been provided by other past or current economic development activities. There is also recognition that Tribes like States and local governments are utilizing gaming revenues to provide basic services to their people. Agreement also appears to exist concerning bingo, and, given the Supreme Court's refusal to distinguish bingo from cards, presumably cards are also acceptable gaming enterprises for tribes.

Following the Supreme Court decision, the members of NIGA re-evaluated their legislative position and determined that although the need for legislation had obviously diminished, legislation could still be helpful to tribal interests. NIGA only supports legislation, however, that does not transfer any jurisdiction to State governments over Indian people, their activities, or their lands. The positive goals that could be achieved in legislation were set out in our April 27, 1987 letter to Chairman Inouye (in response to his March 5, 1987 inquiry to tribes):

> Legislation at this juncture, however could still achieve desirable results. Legislation could codify the federal posture that gaming is a legitimate aspect of the federal commitment to promote Indian self-determination and economic self-sufficiency. Legislation could provide a system and standards for regulating management contracts, as well as provide for uniform national standards for Executive Branch action with respect to gaming. Well crafted legislation could also insulate tribal gaming from what we expect will be a new onslaught of challenges from states, as well as challenges from some quarters of the Department of Justice.

THE LEGAL SETTING

It could be naively hoped that after Cabazon, a major Supreme Court decision, which has as part of its analytical basis a fairly detailed review of the role of tribes in the jurisdictional arrangement, that the case would be understood to stand for more than a proposition supporting:

> "the right of Congress to impose controls over unregulated gaming on Indian lands... ." (May 22, 1987 Letter to the

Honorable Morris K. Udall from the American Horse Council, the American Greyhound Track Operators Association, the Nevada Resort Association, the Gaming Industry Association of Nevada, and the National Association Jai Alai Frontons).

First off, as we have pointed out too frequently to recount, tribal gaming is not unregulated gaming.

We could argue over the scope of Congressional power --the so-called plenary power of Congress in Indian affairs. Rather than debating the scope of Congressional power over Indian affairs, we will focus on the the legal and policy issues that must be addressed in any Congressional decision to change the law and to take from tribes rights we now possess.

It borders on rhetoric and ignores historical reality to point out that the power of Congress over Indian Affairs, whatever its breathe, should be used for the benefit of Indians and not for their detriment.

The Cabazon decision recognized that State laws are not generally applicable to Indians and their lands. Indian lands or Indian country are distinct geographic units, where the governmental unit with primary responsibility is the Indian tribe. Some have argued that it is somehow inappropriate for a citizen of a state to be subject to one of set laws when in his or her state and other laws when they are on Indian lands within the boundaries of that state. However, unique that situation may seem, it is part of the essence of the Federal-Indian relationship. When the framers of the Constitution determined to recognize Tribes as distinct governments and to place the responsibility for Indian Affairs with the Federal Government; it was a knowing decision -- a decision to exclude the States from Indian Affairs. States were then, and unfortunately are periodically now "enemies" of Indian interests. Much of the protective role of the Federal government has derived from the responsibility to protect Tribes from States and the economic interests States represent.

Cabazon also recognizes that there are exceptions to rule of no jurisdiction. A primary exception is where Congress has provided a State or States with jurisdiction. The Courts will will not lightly infer a transfer of jurisdiction. This is in part because Congress as the legislative arm of the Federal government also has a trust obligation to Indian tribes, and unless there is clear evidence to the contrary, legislation will be interpreted for the benefit of the Indian Tribes.

In determining that Congress has not granted states jurisdiction over Indian gaming, the Cabazon Court focused on P.L. 83-280 which is the primary legislative vehicle for allowing States to obtain jurisdiction over Indian lands. P.L. 83-280, an product of the termination era of the 1950's, transferred Federal jurisdiction to specific States in delineated areas over Indian country and provided a mechanism for other States to achieve similar transfers of jurisdiction from the Federal Government. In general this jurisdictional transfer has been determined to be applicable to criminal law matters and not civil matters. The Cabazon Court held that the gamining in the case was civil matter and that no jurisdiction had been transfered to California by P.L. 83-280. Not directly pertinent to Cabazon but extremely critical to the current debate about Indian gaming, are the 1968 amendments to P.L. 83-280. These amendments, as part of Congress' over-all rejection of "termination" added the requirement of tribal consent to the process for jurisdictional transfers. The requirement of tribal consent has for the past twenty years been one of the main stays of the Federal policy of Indian self-determination.

Cabazon, did recognize that even absent Congressional consent, States in some situations do have an interest in activities that occur in Indian country. Quoting, Mescalero,(462 U.S. 324 (1980)),the Court stated :

> [U]nder certain circumstances a State may validly assert authority over the activities of nonmember on a reservation, and ... in exceptional circumstances a State may assert jurisdiction over the on-reservation activities of tribal members."

Although some may argue that gaming is an activity of non-Indians entering a reservation, that is simply not an accurate reading of the law. Indian gaming is an on reservation activity of a Tribe or tribal members. The test that the Court followed in making its judgement is known as the "balancing test." It is essentially a policy judgment that that weighs a state interest against "traditional notions of Indian sovereignty and the Congressional goal of Indian self-government, including its 'overriding goal' of encouraging tribal self-sufficiency and economic development." (Cabazon at 13). Economic competition and the fear of organized crime were held to be insufficiently compelling State interests to justify assertions of jurisdiction.

These same asserted state interests, however, are the interests, now being asserted before Congress, to justify Congressional action for Class III. From our point of view the Supreme Court's rejection of these interests is compelling. First off no matter how phrased, hidden, or distorted, Congress has no business insulating non-Indian gaming interests for whom you have no fiduciary relationship from competition from Indian interests for whom you do have a constitutional and moral responsibility. Secondly, it has been nearly ten years since Seminole revitalized Indian gaming through commercial bingo, and for the most part Indian tribes have a superb record; better than any State that we are aware of in a comparable start-up period. To these arguments the proponents of State jurisdiction have added a new and somewhat curious argument -- Class III gaming is complex and only the States are capable of regulating it. Presumably the States, do what everybody else is capable of doing, they set a regulatory scheme, finance it and hire people to operate it. Something that is clearly doable at all levels of Government. This takes us back to the old problem of the seeming inability to recognize that Tribes are governments. Complexity has not precluded Tribes from functioning as Governments in other areas. In any event, the legislative proposal is for the Federal government to regulate Class III. The complexity argument has no conceptual validity. We, however, would have an open mind to any constructive suggestions to improve or perfect the the federal scheme that has been recommended in S. 1303 and H.R. 2507.

The Cabazon analysis has been specifically adopted and followed in a Class III gaming case, Santa Ana Pueblo v. Hodell. This case recently decided in the federal district Court (D.C. Circuit) held that dog racing was a criminally prohibited activity in the State of New Mexico and therefore illegal under the Assimilated Crimes Act on reservations in New Mexico. The Court made clear in its analysis that other gaming in New Mexico, i.e, horse racing was clearly a regulated activity and therefore not illegal under the Assimilated Crimes Act.

We have reviewed aspects of Cabazon because they are pertinent to the policy issues that Congress must address in the legislative proposals. As noted, we support H.R.2507 and S. 1303 with respect to Class III. I think our review gives credence to our position. One further point about Class III is probably necessary. Throughout the discussions with the various parties of interest, there seems to be a perception that since only a few tribes have even pursued any concrete Class III plans, a Class III jurisdiction transfer to States should not be a concern. This perception does not take into account that jurisdiction, maintaining tribal governmental authority, whether exercised or not, is critical to Tribal survival. While a commercial enterprise may make its decisions solely on the basis of economic facts, Tribes, as governments, with responsibility to assure survival, can not.

RECOMMENDATIONS

Findings:

All of the proposed bills are fairly similar; however, the specificity in S. 555, related to the jurisdiction situation, appropriately updated to reflect Cabazon is somewhat clearer.

Newly acquired lands:

NIGA objects to placing restrictions on the uses to which newly acquired trust lands may be put. The Secretary of the Interior has sufficient discretionary powers to guard against the fears that have been expressed concerning potential lands outside of a tribe's traditional areas. Of the various proposed provisions, H.R 2507 is the most clearly drafted, however, section 20 (b) of S. 555 relating to procedures for waiving the restrictions, in appropriate circumstances, is the most equitable of the waiver provisions.

National Indian Gaming Commission:

NIGA supports the majority Indian Commission provided for in S. 1303, H.R. 2507, and H.R. 964. The principle of Indian Self-determination requires significant Indian participation on the Commission.

Powers of the Chairman:
NIGA supports the provisions of Section 6 of S.555 which provide for a better division of powers between the Chairman and the Commission than the other bills. Of course, section 6 would require modifications to account for Class III gaming.

Jurisdiction:

At noted NIGA supports the Class III approach of S. 1303 and H.R. 2507.

Individual games:

NIGA supports the grandfathering in of individually operated Indian games as provided for in S.555.

Management Contracts:

NIGA strongly supports the management contract provisions of the bills. The Department of the Interior got off to a slow start in its developing of standards for its 25 U.S.C. section 81 responsibilities and still today its standards are short of those contained in the legislative proposals before the Congress. The tribes, individually, and through organizations such as NIGA, have played a very active role in developing these legislative standards. These provisions have come from our experience in operating under and negotiating management contracts. Many of the items were contained in tribal testimony before the Senate Indian Affairs Committee, at its June 16,1985 hearing. The year limitation on mangament contracts was recommended in testimony of the Morongo Band of Mission Indians. Its purpose was to foster Indian self-determination -- to provide a reasonable time in which a tribe could develop expertise and evaluate how its wished to proceed with its gaming enterprise. Chairman Martin's statement provided:

> in addition, a provision that prohibits management contracts from running more than five years would go far in assisting tribes to develop their own expertise and protect against some of the problems that have been so apparent in land and natural resource leasing.

These and other specific limitations in the management contract requirements are far from being the arbitrary standards that some have suggested. They derive from tribal experience and reflect Congress' concern that Indian self-determination and economic sufficiency be fostered in the gaming area. NIGA supports the most stringent standards possible; S. 555 best reflects our position. One caution is that the audting requirements should not duplicate existing adequate tribal auditing systems.

Review of existing management contracts:

NIGA believes that all contracts should be held to the proposed statutory standards, and opposes the grandfather provision in H.R. 964. It is beyond contemplation that given the concern over criminal infiltration that any potential management contractor should be held to other than the full background investigation contemplated in the proposed legislation. A real problem with the BIA's existing procedures is that potential contractors are only screened by a records check and not a full field investigation. Another problem with the BIA process is that although its standards have continued to improve, early standards were meager, and current standards are not equivalent those contemplated in the proposed legislation.

NIGA will be submitting for the record our analysis of Congress' power and authority to require modifications in existing gaming management contracts. Congress has the ability to modify contracts generally when it is acting reasonably to pursue over-riding public policy. In addition, Congressional power in Indian Affairs when acting as trustee, to protect Indians from unscrupulous Non-Indians, such as it did in creating 25 U.S.C. section 25, is extensive. Gaming, generically, is often viewed as a privilege and not a right, and as such is generally afforded less due process protections than other property or contract obligations. Combining these three factors more than adequately sustains Congresses' ability to enact section 14 of H.R. 2507 and S. 1303.

Definitions:

Consistent with the view of the Court in Cabazon, that where Bingo and card games are permitted at all, the State can neither prohibitnor regulate, such games, we recommend a modification of the definition of Class II, as follows:

> H.R. 2507, sec. 20 (b)(5)(B) "Class II gaming" which shall include card games, and the games of chance commonly known as bingo or lotto and which is played for prizes, including monetary prizes with cards bearing numbers or other designations, the holder covering such numbers or designations as objects, similarly numbered or designated, are drawn from a receptacle or electronically determined,

> and the game won by the person first covering a previously designated arrangement of numbers or designations on such card, and shall include as part of bingo, pull tabs, punch boards, tip jars, instant bingos, other such games similar to bingo, including the use of electronic or electromechanical facsimiles.

Assessment:

NIGA questions whether a percentage assessment is the appropriate mechanism for funding the tribal share of the costs of the Commission. We realize that an accurate data base would be necessary in order to develop a flat fee system and that such data is not yet available. We urge the Committee to explore options in this area. A recommended approach would be a two year period for the assessment and then have the Commission establish the lowest flat fee system possible. In any event we believe that a 50 percent share and a 1 percent assessment are the maximum that should be permitted.

Self-regulating Tribes
NIGA supports this provision of H.R. 2507 and S. 1303 as consistent with Indian self-determination.

New Federal Crimes:

S.555 creates 3 new federal crimes pertaining to Indian gaming. We believe that existing laws are adequate to protect the tribes and the public. Our issue has consistently been getting the U.S. Attorneys to enforce the laws that are on the books when such crimes have low DOJ national priority, not adding new laws.

PREPARED STATEMENT OF RONALD D. FIXICO

Mr. Chairman and Honorable members of this Senate Committee, I am Ronald D. Fixico, Executive Director of the Oklahoma Indian Gaming Commission. Mr. Wm. E. Foster, Chairman, of our interstate, tribal gaming organization could not attend today's hearing for health related reasons. However, I bring you the regards of the Chairman as well as the governing board, Oklahoma gaming tribes, associate and affiliate members (30+) that compose the membership of the Oklahoma Indian Gaming Commission.

One scarcely need point out the importance of this legislation to the Indian people across the nation and the concern of the Oklahoma Indian Gaming Commission for the Indian people of Oklahoma whose daily "quality of existence" is being decided by the federal legislative process in motion today. Most certainly, as all citizens do, the Indian people of Oklahoma have placed their trust in this Committee's abilities to comprehend the impact and ramifications of a federal Indian Gaming Control Act.

The Oklahoma Indian Gaming Commission commends the efforts of this federal legislative committee, as you have labored long and judiciously in this process. However, it is the committed responsibility of all Indian people, so long as they desire to retain their governments, to find and promote means to generate essential governmental revenues. Irrespective of a federal Indian gaming law, it has been and will continue to be the responsibility of Indian people to demand their tribal governments meet particular criteria so as to assure tribal revenues are produced from Indian bingo. The Oklahoma Indian Gaming Commission has been at the forefront in coordinating the efforts of our Oklahoma Indian gaming tribes to: legislate, regulate, enforce and show a daily significant concern in establishing and maintaining credibility, integrity and a high standard of ethics within it's membership.

Indeed, there is a growing commitment by the Oklahoma Indian tribal governments towards self regulation, until federal law prevails and hopefully promotes the efforts of the Oklahoma Indian Gaming Commission towards accomplishing it's goals within the framework of this federal law.

Bingo is a business and a business that has intertribal/federal concerns needing to be addressed. The Oklahoma Indian Gaming Commission was compelled by necessity to come together to protect mutual tribal interests and by doing so has benefited it's membership. Today, the Oklahoma Indian Gaming Commission registers with this committee it's concerns and in doing so stands together requesting consideration for fair and equitable treatment under this proposed federal law. This request for equitable law also includes any assessment or fee schedule proposed within the same.

As any legitmate American industry, we have some problem areas to address. However, as we bring our testimony before the Senate Committee, we realize there are other entities who strongly oppose opening this "door of opportunity" Indian bingo has provided in the way of generating revenues for tribal governments and jobs for Indian people.

While others may see only the money attached to the subject of Indian bingo, the Oklahoma Indian Gaming Commission has a different view. Notwithstanding the influence Indian gaming has upon the local economy, we see the opportunity to train our Indian people in accountability to tribal governments and the individual work ethic, which has been the foundation of this great nation.

Thru the efforts of the Oklahoma Indian Gaming Commission, we are committed to raising the "level of existence" of Indian citizens. It is our inalienable right, as sovereign Indian Nations, to provide for our governments and our people. If it is necessary to be regulated by the federal government to accomplish these goals so as to provide for the many, then let us all speed up the process so that we, the membership of the Oklahoma Indian Gaming Commission, can get on with the business of making money for our tribal governments and jobs for our Indian people.

Mr. Chairman, with best wishes for success of this Committee in providing guidance to the United States Senate reference this matter, the Oklahoma Indian Gaming Commission thanks you for allowing us to appear and make comments in today's proceedings.

PREPARED STATEMENT OF HERMAN AGOYO

Mr. Chairman, Members of the Committee:

My name is Herman Agoyo and I am the Chairman of the All Indian Pueblo Council. I am here today as the representative of the Pueblos of Sandia, San Juan, Tesuque, Isleta, Acoma and Santa Ana. Each of these Pueblos is currently engaged in gaming activities or has plans to do so.

We want to commend this Committee for its continuing efforts to develop and secure passage of federal legislation to protect and promote Indian controlled gaming. We know that the task before you is not an easy one. We appreciate the opportunity to appear here today to share our views with you.

As you know, the United States Supreme Court has recently issued its opinion in the case of California v. Cabezon Band of Mission Indians. We are pleased that the Court confirmed prior federal law and policy with respect to several fundamental aspects of the federal/tribal relationship. In particular the Court once again found that the states lack authority to exercise jurisdiction over activities conducted on Indian land and that only the United States and the tribes possess such authority. The Cabezon case also confirms the constitutional responsibility of the United States for the promotion, protection and regulation of trade and commerce with the Indian Tribes. Finally, the

Cabezon case has confirmed the legitimate federal and tribal interest in promoting Indian self-governance and economic self-sufficiency.

It is the goal of the Pueblos engaged in gaming activities to ensure that federal legislation is enacted which is consistent with existing federal Indian law, promotes Tribal self-governance and enhances Tribal economic self-sufficiency. We have developed a six-point position on federal legislative proposals, as follows:

1. Federal legislation is desirable because it will underscore the fact that regulation of Indian gaming has been preempted by federal and tribal law.

2. Uniform standards for the conduct of Indian gaming are necessary for the protection of both the Tribes and the patrons of the gaming activities.

3. Indian gaming control legislation should be consistent with existing statutory and case law relating to other economic and business activities of Indians on Indian lands.

4. The legislation should clearly recognize gaming as a legitimate means of generating Tribal revenues, promoting economic development and enhancing self-determination through Tribal control.

5. The legislation should clearly provide for and authorize Indian gaming in any state within which similar activity is permitted by non-Indians under state law.

6. The legislation should prevent the intrusion of organized crime or criminal activity into Indian gaming for the benefit of the Tribes and the patrons of the Indian games.

Each of the bills currently pending before the Congress contains elements of our six point position. However, S.1303 and H.R.2507 are the most consistent with our position for two important reasons. First, these bills recognize and expressly provide for Tribal self-regulation over Class II gaming in certain circumstances. These provisions are entirely consistent with federal laws and policies aimed at promoting Tribal self-governance. Second, S.1303 and H.R.2507 respect the historic tribal/federal relationship. Under these bills state governments would not assume jurisdiction over Class III Indian gaming. This is as it should be. State jurisdiction over Indian gaming is neither desirable or appropriate for at least three reasons:

1. State jurisdiction over Indian gaming would be contrary to federal Indian law as enunciated through the U.S. Constitution, the Treaties, federal statutes, court decisions and, in many instances, state constitutions.

2. State jurisdiction would undermine and impair the authority of the Tribes and would thereby undermine longstanding federal laws and policies promoting Tribal self-governance.

3. State jurisdiction would inevitably undermine federal efforts to promote Tribal economic self-sufficiency due to the direct financial interest held by many state governments in their own gaming operations.

We believe that S.1303 and H.R.2507 reflect a recognition of both the Tribal/federal relationship and the capability of Indian people to manage their own affairs. Let us all remember that the Pueblos were self-governing long before the Spanish came to our territory in the 1500's. We have a long and proud history of managing our own affairs. We believe that part of the bargain that we made with the United States during the 1800's was that we would be free from state interference in our affairs in exchange for the surrender of much of our land. The United States understood this bargain as recently as 1912 when New Mexico was admitted to the Union. One of the conditions of admission to full statehood was the state's disclaimer of jurisdiction over Indians and Indian lands. The state voluntarily agreed to this condition. The disclaimer of jurisdiction is still part of the state constitution and should not be changed through federal gaming legislation.

The proponents of state jurisdiction often try to justify their position by raising the specter of organized crime. This is the same argument that was raised when the Tribes first began to be involved in bingo. Some critics said that the Tribes lacked the capacity to run honest and fair games and that organized crime would quickly infiltrate tribally controlled games. This has not proven to be true. Today over one-hundred Tribes are engaged in gaming. There is no evidence of infiltration by organized crime. In fact all available evidence indicates that the tribes are operating honest, well organized games which have the full confidence of both Indian and non-Indian patrons. This is not surprising to us. We know how to be self-governing. We have no interest in allowing organized crime to participate in our affairs. There is not now and never has been an Indian element in organized crime activities.

I want to point out that the United States Constitution envisions a federal system which has as its component parts federal, state and tribal governments. We all know that most children in this country are taught in school about the federal and state governments. It seems that only Indian children are taught about tribal governments. Yet, the Supreme Court, the Congress and the President have recognized the constitutional role of tribal governments for two hundred years. In light of this, we must ask: Whose interest will be served by the imposition of state jurisdiction over gaming on Indian lands. Clearly, the integrity of the United States Constitution will not be served by such action. Tribal self-governance will not be served. Indeed, it is even questionable to us whether state governmental interests would be well served because the insertion of state jurisdiction will likely lead to unwanted frictions between the state, tribal and federal governments.

We submit to you that the only interest to be served by providing for state jurisdiction would be the economic interest of some non-Indians who fear the competition from Indian controlled gaming. The issue here is not organized crime. The issue is not lack of tribal capability. Indeed, tribes have shown both capability and responsibility in a diverse array of activities involving non-Indians. The issue is one of economic competition. Some evidence of this can be seen in the fact that it is the non-Indian organized gaming interests who are also pushing so hard for state jurisdiction. Other non-Indian businesses have not promoted state jurisdiction over Indian gaming. Indeed, most non-Indian businesses are delighted with the increased demand for goods and services which has occurred as a result of Indian controlled gaming. Millions of dollars of new business for non-Indians has been generated as a result of Indian gaming. We respectfully submit to you that the fear of economic competition on the part of the non-Indian organized gaming interests does not create a sufficient or rational reason to adopt legislation which will undermine tribal self-governance and the federal/tribal relationship.

We also want to take this opportunity to share with you our views on the proper role and operation of the federal gaming commission which would be authorized by every bill now under consideration. We have developed a five point position with respect to the commission, as follows:

1. The Commission should be structured and organized in a manner which will enable it to fulfill the federal trust responsibility for the protection and promotion of Tribal interests and Tribal self-governance.

2. The authority of the commission should be carefully balanced to provide for deference to the primary regulatory authority of Tribal governments.

3. An independent federal commission is preferable to the establishment of another administrative office in the Department of the Interior.

4. The operations of the commission should be funded entirely from federal appropriations. No other federal regulatory entity is funded through an annual assessment of the entities it regulates. The federal trust responsibility is to promote and protect Tribal interests. There is no rational basis for expecting the Tribes to bear the financial burden of financing the commission.

5. Enforcement decisions and actions of the commission should be undertaken in the context of the federal duty to promote and protect Tribal economic self-sufficiency and self-governance. Sanctions or penalties should only be imposed by the commission in a manner which is the least disruptive of gaming operations while insuring the integrity of the operation for the benefit of the Tribes and the patrons.

We are hopeful that this Committee will carefully reconsider the concept of assessing the Tribes to pay for the operations of the gaming commission. While we appreciate the fact that the federal government is operating at a deficit, we must question the wisdom of assessing the tribes in order to pay for fulfillment of the trust responsibility.

Mr. Chairman, we again thank you for this opportunity to appear before the Committee and express our views. We pledge to you our cooperation and best efforts to assist the Committee and the Congress in the adoption of appropriate legislation.

PREPARED STATEMENT OF LIONEL JOHN

Good morning, Mr. Chairman, members of the Committee and staff. My name is Lionel John. I am the Executive Director of the United South and Eastern Tribes, Inc. and a member of the Seneca Indian Nation of New York.

USET is an inter-tribal organization composed of sixteen member tribes located in nine states along the south and eastern seaboard from Florida in the south to Maine in the north. USET, headquartered in Nashville, Tennessee, was founded in 1968 and is dedicated to promoting the economic and social welfare of its member tribes.

Currently seven of our member tribes are actively engaged in gaming. Three additional member tribes will be engaged in gaming within the year. In addition to their own games, two of our member tribes act as contract managers for other tribal gaming operations. All of our gaming operations involve BINGO and Pull Tabs and are 100% owned by the respective tribes.

Establishment of federal standards for gaming activities within Indian reservations and on Indian lands is necessary to meet the concerns which have been raised about such activities and to protect such activities as a means of generating needed tribal revenues.

It is common knowledge that the current administration policy is to cut back on federal spending, including Indian programs, whether it's trust responsibility-related or not. The Administration has made clear that Indian tribes can no longer expect the BIA to finance tribal government operations but that economic development and private sector initiatives will be the current trend for tribal development and operations.

"It is important to concept of self-government that tribes reduce their dependence on federal funds by providing a greater percentage of the cost of their self-government. Without sound reservation economies, the concept of self-government has little meaning...This administration intends to remove the impediements to economic development and to encourage cooperative efforts among the tribes, the Federal Government, and the private sector in developing reservation economies."

The USET Tribes suggest that Congress encourage and abide by the Administration policy of Tribal economic development by removing impediments and maintaining government-to-government relationships. Tribal governments have as much responsibility to provide essential services as other governments and the same or greater need to raise revenue to fund the needed services.

S. 555 and S. 1303 provides that the net revenue generated by tribal gaming operations be used for essential tribal programs and operations. Without the revenue generated by gaming, many tribes would be bankrupt and unable to provide the essential and critical services that are normally provided by governments to their citizens. Tribes, just like states, are responsible for providing a broad range of services. Unlike states, however, tribes do not have the tax base nor economic infrastructure to raise the essential revenue to support such services. Given the large cutbacks in federal assistance in recent years, the lack of a tax base, economic infrastructure or sufficient exploitable natural resources, many tribes found themselves in a situation of having to eliminate or drastically cut back critically needed services. Many tribes were facing high deficits and bankruptcy. Gaming revenue was the only viable revenue generating activity that many tribes could turn to in order to remain solvent and restore essential services.

While states have many tax sources to generate needed revenue, nearly every state has sanctioned and agressively promoted some form of gaming activity to supplement their state coffers. While gaming has been recognized by most states as a legitimate means of raising revenues, they have also enjoyed a monopoly over any high stakes gaming operations. For most, if not all tribes, taxation is not a viable option to raise sufficient governmental revenue.

While the states oppose gaming by tribes, the states actively promote their own gaming operations. While it is acceptable for states to generate revenue via gaming it isn't acceptable for tribes to do so and the states can offer no suggestions to tribes of alternative means of revenue generation. We would like to point out some figures which would attest to the ludicrousy of the various state's positions. Out of the fifty states, only four do not allow gambling of any kind. Nineteen states are directly involved in lotteries and thirty-two states generate revenue from horse racing, fourteen have dog racing, and forty-three permit Bingo. This seems to suggest that the objections or concerns are not of maintaining tribal integrity, but to circumvent economic benefits to the tribes and to gain control just for the sake of control over tribal affairs.

Correspondingly, Indian gaming indirectly increases state revenue. Patrons of Indian gaming generate revenue through gas, sales, and income tax via the money they spend on transportation, food, lodging and incidental expenditures.

A sampling of the essential governmental services and charitable contributions made by some of the USET gaming tribes is attached to this testimony. The services include construction of health clinics, provision of nutrition programs for the elderly and destitute, scholarships, law enforcement, water and sewerage services, housing, road construction and maintenance, medical services, business loans and day care facilities to name a few. Charitable contributions include those to the Red Cross, American Cancer Society, United Way, Salvation Armny, Muscular Dystrophy and many others.

The revenue from Indian gaming has also provided investment capital for many tribal enterprises and individual businesses thus helping to diversify the reservation economy, create jobs, reduce welfare and other transfer payment and generate new income and taxes.

There has been a lot of talk about the infiltration of organized crime into Inidan gaming operations. To our knowledge, neither the FBI nor the Justice Department have been able to document a single case of organized crime involvement in Indian gaming.

While organized crime does not appear to be a pressing issue the member Tribes of USET are concerned about unscrupulous management contractors. We feel that the bills affords adequate protection to tribes to prevent or eliminate such contractors' involvement in Indian gaming in instances where such persons have been or are subsequently convicted of a gaming offense or felony or fail to comply with the terms of the management contract or tribal gaming ordinance.

The bills would also prohibit tribal council members from having any personal interest in a management contract with their own tribe. Since council members are responsible for making decisions for the good of the tribe, such a prohibition would eliminate potential or actual conflicts of interest.

Based upon the experience of the gaming tribes of USET, we feel that both S. 555 and S. 1303 are a well-balanced legislative measures to ensure that Indian gaming operations are conducted with accountability, honesty, and without involvement of unscrupulous or criminal elements from within or outside of the respective tribes.

Both bills establish all of the essential standards and safeguards and provide for essential sanctions for any violations of those standards which might be necessary for the proper operation of gaming activities on Indian reservations. The legislation would not authorize any tribe to engage in any gaming activity which is prohibited by state law. They merely recognize the sovereign rights of tribes to regulate their own gaming activities if such activities are not otherwise prohibited by state or federal law.

Obviously the major difference of concern to USET is the difference in which Class III gaming would be regulated under the respective bills. We adamantly oppose any legislation which would directly or coercively require that tribes come under the civil and criminal jurisdiction of a State. While none of the USET member tribes are operating Class III gaming, there are a number of tribes who do. There has been no demonstration that these games are not professionally, compentely, and honestly operated. We therefore favor the provisions of S.1303 over S.555 in this regard.

We would also like to state that we favor the definition of Class II gaming in S. 1303 over S. 555 and that USET has unanimously passed a resolution in support of the provisions of Section 23 of S. 1303.

Given the close similarity of most of the other provisions of the respective bills, our recommended amendments herein refer to S.1303.

RECOMMENDED AMENDMENTS TO S. 1303

1. We recommend that Section 4(c) on page 4 be amended to delete any requirement that tribes withold any federal taxes from a person's winnings. While we have no objection to reporting winnings in accordance with IRS regulations, we do not wish to act as the tax collector for the IRS.

2. We strongly recommend that paragraph (5) on page 7 be stricken from Section 6(a) and that paragraph (5) instead be added as a new paragraph to Section 7 (a).

Section 6. gives the Chairman certain powers which are appealable to the Commission. While the powers listed in paragraphs (1) thru (4) are to be exercised pursuant to very specific and reviewable standards specified in the bill, paragraph (5) is not subject to specified standards and reasonable persons could promulgate vastly different regulatory schemes for Class III. Given this fact, an appeal to the Commission from the Chairman's action under paragraph (5) would lack reviewable standards. Under what specific standards could the Commission overturn on appeal the Chairman's Class III regulatory scheme? We strongly feel that the regulatory schemes for Class III should be a NON-delegatable power of the entire Commission.

3. Section 12 will require conforming amendments if our preceeding amendment is adopted. On page 17, lines 13 and 23 and on page 19, line 2 delete the word "Chairman" and add the word "Comission" in its place. And on page 18, line 2, delete the word "he" and replace it with the word "it".

4. We strongly recommend that Section 9.(b) on page 11 be stricken entirely from the bill. We strongly object to permitting the Secretary of the Interior to provide interim regulation of the Act for two primary reasons.

First, regulations are critical to whether an Act is carried out as intended or sabotaged by unworkable, and over reaching regulations. While the Secretary's regulation would be interim, regulations, whether interim or not, have a way of becoming permanent and precedent setting. The Indian Self-Determination Act is a classic example of a good law encumbered and abused by bad and excessive regulations.

Second, there is no set date or time frame by which the Commission itself would have to be appointed and functioning. The Secretary could interim regulate for years.

We therefore also urge that the Section 5(a) of the bill be amended to require appointment and establishment of the Commission within 180 days following enactment of this bill.

5. We recommend that Section 11(c) be amended to permit Class II gaming to be conducted without regard to state regulatory laws by individuals or other entities licensed by the tribe in accordance with tribal law and this Act.

While none of our member tribes currently do so, some tribes have licensed individuals to run Class II operations. Rather than being burdened with running their own games, some tribes prefer to generate income by taxing non-tribally owned gaming operations.

One of our member tribes which has its own BINGO operation also licenses the community fire departments to conduct their own BINGO operations which pays for the costs of those fire departments.

6. We recommend that Section 13(a)(1) on page 19 be amended such that, any individual or entity that is hired by a corporation that has the gaming management contract and who has management responsibility be subject to background checks. As the bill is now, a corpopration that has a management contract with a tribe, could hire individuals to do day to day management of the gaming operation and those individuals would not be subject to any background checks. Only the major stockholders of the corporation are subject to checks but key managers of their gaming operations are not.

7. We recommend that Section 13.(j) be amended to provide a grace period permitting employees of a gaming operation who are employed in a management capacity to begin and continue to be employed during the pendency of their license application. Key employees periodically change, sometimes with little or no advance notice. The gaming operation should not be forced to close or reduce operations pending licensing review of key employees.

8. We recommend that Section 13(l) be amended to include the costs of making a determination on key management employees under subsection (j) as well as (f)(1)(D).

9. We recommend that Section 7.(b)(4) on page 9 be amended to strike the word "other" on line 4 and insert in leiu thereof, the word "related".

CONCLUSION

Indian Tribes are at a critical crossroads at this point in time. The unemployment rate for the USET Tribes ranges from a high of 46 percent to a low of 25 percent. The federal deficit and resultant budget cuts have drastically reduced and, in some cases, eliminated many federal programs for Indian people. Most tribes do not have an economic infrastructure or viable tax base from which to generate needed revenue to maintain essential services or to develop critically needed investment and development capital. The states, when referring to Indian gaming, speak of the inherent evil of gambling yet they aggressively promote their own gaming as a means of raising revenue. The states insist that they must have the power to regulate Indian gaming because the tribes are incapable of doing it. Yet the papers are filled with stories of corruption and criminal activity surrounding state regulated gaming activities. By comparison, Indian gaming operations have had no such demonstrable corruption or criminal activity. Perhaps the states should allow tribes to regulate their gaming operations.

We submit that the issue is not demonstrated corruption or inability to regulate, but one of competition, greed and control. The states and private gambling industry wish to maintain their monopoly and control. The issue has been the same with all shared resources such as fish and wildlife, water rights, zoning, etc. In virtually every area of competition for resources the states and other competitors have always contended that tribes can't manage and we should have control. The record in virtually every area including gaming demonstrates otherwise.

We urge you to act favorably and expeditiously on Indian gaming legislation and that the legislation you adopt is based upon reason and the facts. We thank you for the opportunity to present our views on this very important matter.

USE OF PROCEEDS FROM GAMING OPERATIONS
CHITIMACHA TRIBE OF LOUISIANA

Chitimacha Tribe of Louisiana Contributions:

(1) Legal Assistance for Tribal Government and Individuals

(2) Tribal Council Support

(3) Economic Development Programs and Research

(4) Low Interest Housing Loan Programs

(5) Education Programs

(6) Scholarship Program

(7) Youth Programs

    a. Recreation
    b. Organized Sports

(8) Senior Citizen's Programs

    a. Hot Meals Program
    b. History Project
    c. Social Programs
    d. Trip Sponsorship

(9) Maintenance Program

    a. Road and Access Maintenance
    b. Building and Grounds Maintenance
    c. Community Clean-up

(10) Land Acquisition

(11) Per Capita Payment

(12) Trust Fund for Minors

(13) Investment Fund

(14) Charitable Organizations

USE OF PROCEEDS FROM GAMING OPERATIONS: SEMINOLE TRIBE OF FLORIDA

Seminole Tribe Donations and Contributions:

(1) 1 day's proceeds to Muscular Dystrophy Telethon.

(2) State Museum for Research and Development and Cultural Development Program.

Tribal Program Subsidies Include:

(1) Education programs including scholarships.

(2) Medical programs supplement.

(3) Homes for senior citizens - rent or mortgage-free program.

(4) Recreation and Gymnasium buildings - supplement towards construction cost.

(5) Senior citizen hot meals building.

(6) New clinic.

(7) Neighborhood facility building.

(8) Business development loan program for individuals. 21 gone into some form of business to-date. $35,000 loan average.

USE OF PROCEEDS FROM GAMING OPERATIONS: SENECA NATION OF NEW YORK

Seneca Nation Tribal Program Contributions

(1) Law Enforcement

(2) Education

(3) Day Care

(4) Public Works

(5) Roads and Streets

(6) Water and Sewer

(7) Senior Citizen Programs

(8) Recreation

(9) Community Services

Donations and Contributions

(1) American Red Cross

(2) Salvation Army

(3) American Cancer Society

(4) Most Major Charitable Organizations

Employment

(1) Facility created 150 full and part-time positions.

(2) Income generated creates local economic cycle for reservation which otherwise would be limited.

USE OF PROCEEDS FROM GAMING OPERATIONS: POARCH BAND OF CREEKS

Poarch Band of Creeks Tribal Contributions:

(1) Economic Development Programs

(2) Land Acquisitions

(3) Tribal Government Support

- a. Law Enforcement
- b. Community Facilities
- c. Education Programs
- d. Social Programs
- e. Health Programs

These are planned for when sufficient revenue is generated since this operation is new.

PREPARED STATEMENT OF IAN MACPHERSON

Mr. Chairman and Members of the Select Committee, I appear today on behalf of the Attorney General of Arizona, the Honorable Robert K. Corbin, to share with you the concerns of the law enforcement community in the State of Arizona with respect to this most important topic, gambling within the exterior boundaries of the nation's Indian reservations. I welcome the opportunity to express to you those views in a spirit of cooperation and intellectual candor in an attempt to intelligently address these complex issues.

I first wish to commend both the United States Senate and the United States House of Representatives and their respective members for their efforts in preparing and introducing the various pieces of proposed legislation on this subject. These initiatives hopefully will bring these matters which have perplexed both Indian tribes, the States and the Federal Government for years, to a just and final conclusion. The questions which you address in your hearings are extremely important and deserving of thorough debate and consideration. However, as Attorney General Corbin testified on prior occasions, notably with respect to S. 902 and H.R. 1920 in the 99th Congress, it continues to be his strong belief that the prime responsibility for establishing and enforcing public policy on matters with as particularly localized an impact as those relating to gambling are uniquely within the province of the States rather than the Federal Government. Moreover, it remains Attorney General Corbin's position that this historical circumstance should continue to guide the analysis in this area.

Having said this, however, it is also the position of Attorney General Corbin that in order to completely remove persistent ambiguities which continue to plague the proper resolution of these issues, some form of federal action, hopefully in the form of legislation enacted by Congress, is needed. That legislation should address legitimate aspirations of Indian tribes to pursue economic gain through the same gaming mechanisms now pursued by the various states, but at the same time should also recognize the legitimate law enforcement concerns of all citizens of the particular states, including the citizens of such states who are also members of Native American tribes living within those states. Only through such an approach may it be expected that the controversy surrounding this topic will be diminished.

On February 25, 1987, United States Supreme Court handed down its decision in State of California v. Cabazon Band of Mission Indians. In a 6-3 split opinion, a majority of the Court ruled that gambling activities which were conducted on an Indian reservation which were also permitted but regulated by the State of California beyond the boundaries of Indian country could not be regulated or prohibited by the State of California under the authority of Public Law 83-280. In so ruling, the Supreme Court for the first time recognized and applied the "civil/regulatory-criminal/prohibitory" standard developed in other cases to the issue of gambling within Indian country. In short, the Court ruled that a state may not prohibit within Indian country those gambling activities which it merely permits and regulates beyond Indian country.

With regard to the law enforcement concerns of the states, however, the Court continued to recognize an important component of state sovereignty, as opposed to Indian tribal sovereignty, viz., that where a state prohibits a particular type of activity, whether it be gambling or some other act, such activities may not, under the authority of the Court's decision, be conducted with impunity within Indian country. The Court in footnote 10 of the opinion specifically recognized that those activities which a state has determined to be prohibited within its borders, even though there may be limited exceptions to the general prohibition, should not be disregarded in favor of acquiescence to such otherwise prohibited activities within Indian country in such states. The Court specifically found that "[t]he applicable state laws governing an activity must be examined in detail before they can be characterized as regulatory or prohibitory." Citing the prior decisions of the United States Court of Appeals for the 9th Circuit in United States v. Marcyes, and United States v. Farris, the Court recognized the continuing legitimate law enforcement concerns and public policy determinations of the states with respect to activities determined by the freely-elected representatives of the people in such states to be prohibited as a matter of not only public policy in the state but also as a matter that state's criminal law.

While various groups may look to the Cabazon decision as constituting a carte blanche communication from the Court to proceed with any and all forms of gambling within indian country, a more detailed examination of the case, including the views of the dissenting members of the Court, establishes that such an expansive interpretation of the decision is unwarranted. In point of fact, footnote 10 of the decision and the opinions in the Marcyes and Farris cases clearly demonstrate that legitimate law enforcement concerns as well as the recognition of state sovereignty are matters which should not be ignored or disregarded in the analysis.

In this regard, the proposed pieces of legislation now under consideration by the Select Committee as well as the Committee on Interior and Insular Affairs of the House of

Representatives, present a wide variety of options. Not surprisingly, those options which recognize or advocate an increased latitude for gambling activities within Indian country free from state control or "interference" appeal to some groups. On the other hand, those proposals which recognize strong and direct state control appeal to others. The fact of the matter is that the appropriate solution probably lies somewhere in between those two guideposts. In this regard, there can be no denial that the Cabazon opinion says what it says: however, that which it does not say cannot properly be relied upon as authority for the disregard or subordination of legitimate state law enforcement objectives.

In this regard, the experience in the State of Arizona is illustrative of the problem. Several years ago, as Attorney General Corbin testified with respect to S. 902 and H.R. 1920, certain non-Indian entrepreneurs approached an Arizona Indian tribe with the objective of constructing a parimutuel jai alai fronton just south of the greater Phoenix metropolitan area within the boundaries of the tribe's reservation. Not surprisingly, a lawsuit ensued. The litigation has been protracted in nature, but appears to be moving in the direction of a resolution in view of the fact that on June 9, 1987, the U.S. District Court for the District of Arizona dismissed the complaint of the non-Indian entrepreneurs against Attorney

General Corbin. The action sought an injunction and a declaratory judgment forbidding Attorney General Corbin from enforcing Arizona's anti-gambling laws against the proposed operation. Although Attorney General Corbin had previously moved to dismiss the complaint, and the non-Indian entrepreneurs had initially responded in opposition to the motion, following the Cabazon decision, the plaintiffs filed, in essence, a voluntary motion for dismissal of their own complaint. In view of the fact that no construction activity had yet begun, the plaintiffs agreed with the Attorney General that no ripe "case or controversy" existed and that therefore the action should have been dismissed.

However, the voluntary motion of dismissal also cited and relied upon the decision in the Cabazon case. Although no overt construction activity has as yet taken place at the site, there have been certain indications that the actual construction of a parimutuel jai alai fronton without the existence of a district court injunction or declaratory judgment is under consideration. Attorney General Corbin has taken the position that, because of the clear exception set forth in footnote 10 of the Cabazon decision, the legal questions remain unresolved. Accordingly, it is his further position that if such a fronton is constructed and parimutuel jai alai conducted therein, a clear violation of Arizona laws

.prohibiting such activities will occur and the likelihood of state action through the office of the Attorney General will not be unlikely.

It should also be pointed out that the U.S. District Court for the District of New Mexico recently held in Santa Ana Pueblo v. Hodel, that parimutuel dog racing in the State of New Mexico was "criminal-prohibitory" in nature, even though New Mexico permitted parimutuel horse racing, and that therefore the Secretary of the Interior's decision to disapprove of the tribe's efforts to construct and operate a parimutuel dog racing facility was proper.

Cases such as the foregoing are merely illustrative of the larger problem which persists, i.e., a continual "testing of the waters" through the judicial system with tribal gaming interests on one side and state law enforcement authorities on the other. While this may eventually produce case law precedent, in the meantime it engenders nothing but further confusion. Thus, the work of Congress with regard to the fashioning of effective and balanced legislation becomes all the more crucial.

The notion that the objectives of state law enforcement authorities and the objectives of tribal governments must inevitably be at odds is one that must be addressed and rejected at the earliest opportunity. From a purely intellectual standpoint, the goals and objectives of a state government vis-a-vis the objectives of a tribal government, qua governments, are more likely to be similiar than disparate. Accordingly, recognition of the legitimate desires and needs of both must be taken into consideration if any legislation is to be effective. It will serve no productive purpose and indeed may be counterproductive to fashion legislation which converts one or the other of the parties into a "winner" and the other into a "loser".

History is replete with examples of the lure that high stakes gambling holds for criminal infiltration, organized and otherwise. Indeed, the United States Justice Department has clearly articulated its concerns over the phemomenon in its prior testimony on S.902 and H.R.1920. In this regard, it is Attorney General Corbin's sincere belief that the state governments, rather than the Federal Government, are best equipped to deal with the law enforcement concerns associated with so particularly local a phenomenon as gambling within the borders of the state. To repose the authority for enforcement over "Class III" gambling violations in either the Federal Government or a "National Indian Gaming Commission" is to invite further difficulties. With due respect, local law enforcement concerns of this nature are best handled at the local level by local authorities experienced in these matters than in federal agencies which may or may not have the immediate expertise to adequately police rapidly evolving situations and which may or may not have the proximate influence possessed by local officials.

While the Cabazon decision recognizes the right of Indian tribes to engage in the types of gambling activities otherwise permitted and regulated by the state without interference by the states, it also clearly recognizes the continued authority of the states to prohibit certain activities and to police and punish for transgressions of such prohibitions. While no one would deny the abstract power of the Congress to elevate all forms of gambling within Indian country to a level completely insulated from state action, the central question to be asked is simply: Is such a course of action wise or prudent? It is the position of Attorney General Corbin that the answer to that question must be: No.

Tribal sovereignty lies at the heart of a proper examination of these issues. However, state sovereignty is also central to the proper resolution of these matters. The difficult task facing the Congress, of course, is to properly identify the limits of these two sovereignties, balance any competing interests and produce a coherent program which meets most, if not all, of each sovereignty's needs. Only through such a process of balancing the interests of both may a lasting solution to this vexing area be achieved. I speak for Attorney General Corbin when I say that he stands prepared to assist and facilitate in whatever manner appropriate in support of your efforts.

Once again, I take the opportunity to thank you on behalf of Attorney General Corbin, as well as myself for the opportunity to present these views to the Committee. I would be happy to attempt to answer any questions that the Chairman or the members of the Committee might have.

PREPARED STATEMENT OF JOHN DUFFY

Thank you very much for the invitation to appear before you regarding the regulation of gambling on Indian lands. As you consider H.R. 964 (Congressman Tony Coehlo) and H.R. 1079 (Congressman Morris Udall), I hope that you will consider my thoughts and experience in this area.

I am speaking to you today as a representative of the National Sheriffs' Association. There are 3,100 elected sheriffs in this country and they are the chief law enforcement officers in their county. As the chief law enforcement officer, sheriffs are concerned about the proliferation of crime and that is why we feel it is so important for you to hear our concerns. While my testimony will focus on the problem of organized crime infiltration in San Diego County, I submit to you that loosely regulated Indian gambling will open up new havens for organized crime in Indian lands all over this country.

The consequences of our actions with regard to the bills pending before you affects Indians and non-Indians alike. Indian gambling draws large numbers of non-Indians to gamble on Indian lands. The very nature of this enterprise is such that strict regulation is required to protect all our citizens.

I am going to provide some background for you about California as a PL-280 State and outline for you some of the problems we have had in California with organized crime and Indian gambling. This will convince you of how important adequate regulation is with regard to gambling. Reservation gambling, particularly bingo, has become a major concern for local, state and federal law enforcement and has impacted adversely on both Indian and non-Indian citizens.

California, as I am sure you are aware, is what is known as a Public Law 280 State, unlike other States such as Arizona where criminal law enforcement is not the responsibility of state and local agencies on Indian land.

The enactment of Public Law 280 in 1953 provided that all criminal laws of California and San Diego County were as applicable on an Indian reservation as in any other part of San Diego County. What this means is that beginning in 1953, the FBI no longer enforced federal criminal law on 117 reservations in California, 19 of which are in my County of San Diego. The federal statutes and the federal officers were replaced by state statutes, and the federal officers were replaced by state statutes, county ordinances and deputy sheriffs. Even though there have been a few federal court tests involving such things as the authority of deputy sheriffs on Indian reservations and the applicability of certain county ordinances which provide for criminal sanctions for violating such things as our public dance hall ordinance, the transition went smoothly.

For many years it has been the expectation of United States citizens that laws are applied equally throughout the country and that they are enforced equally. All of that changed with the advent of what the media calls, "Indian Bingo". I know that in 1953, the United States Congress did not foresee and did not intend that the conduct of gambling operations, which would result in the immediate arrest of the operators if committed anywhere else in California, would be not only tolerated but actually promoted by the Bureau of Indian Affairs and the Secretary of the Interior if conducted on Indian reservations. However, that is exactly where we are today. If a local Catholic Church or an Elk's Club or a mobile homeowners' association conducted bingo operations in the same manner as profiteering companies under contract with tribal councils now conduct them on 26 separate reservations in California, a Catholic priest, an Exalted Ruler or a mobile homeowners' board of directors would be prosecuted for criminal law violations.

I also do not believe that the Ninth Circuit Court of Appeals, in its 1982 reversal of a federal court decision in the Southern District of California, entitled "Barona Group of Capitan Grande Band of Mission Indians v. John F. Duffy, Sheriff of San Diego County", anticipated that they were creating a potential of 117 separate enclaves in California, 19 in San Diego County, where illegal gambling by profiteering corporations would be sanctioned. Nor do I believe they still understand the problem as evidenced by their 1986 decision (Cabazon Band v. Riverside County) to uphold their 1982 decision (Barona v. Duffy) on allowing Indian gambling.

This problem has now grown in many other states such as Washington, Arizona and New Mexico. Some of these tribes are already discussing the possibility of introducing horse racing, dog racing, Jai Alai and off-track betting. We are talking about a growing, unregulated national problem.

The Barona decision encourages completely unregulated illegal gambling by non-Indian profiteers who use judicially established legal loopholes in Public Law 280 to expand activities that are illegal in every other place in the State except on Indian reservations. The essence of the Barona case was that the Ninth Circuit said that California's statute on bingo was a civil/regulatory and not a criminal/prohibitory statute. This decision was exactly opposite from the findings of the federal trial court judge. As a result, high stakes bingo and other illegal forms of bingo are being operated by quickly formed profit-making companies who have "sweetheart" contracts with Indian tribal councils.

Since the Barona decision, 25 other tribal councils in California have enacted a so-called bingo regulatory ordinance, four of which are in my county. Barona was in operation until May 1986 when they closed their doors following the indictment of members of the management company for skimming thousands of dollars from the operation. A Texas-based company is negotiating a contract to run bingo and other forms of gambling on yet another reservation in my county.

All of these tribal councils have signed long-term contracts with different profit-making companies who operate high stakes bingo games that are not permitted anywhere except on Indian reservations. These unrestricted games have lured thousands of people to the Indian reservations and are generating millions of dollars of profit to these corporations.

Indian gambling operations are not subject to any control whatsoever and have great potential to be used for skimming, laundering of illegal funds and many other activities which are best avoided in such states as Nevada and New Jersey by regulating the gambling enterprise through state gambling commissions.

In California, the Ninth Circuit Court has allowed illegal gambling to take place on Indian reservations without regulation. Prior to their closing, the management company at the Barona Reservation said they were grossing $1 million-per-month in cash.

They were in operation since 1982 and the estimated gross income was in excess of $35 million dollars; however, there was no visible improvement to the Indians' status. In fact, some of the homes on the Barona Reservation still do not have running water. The management company claimed that all the money went to pay for prizes and payroll expenses. The dividends declared by the company were minuscule in comparison to the amount of cash taken in. The management company blamed their closure on the fact that the Indians would not allow them to bring in outside stockholders to bolster the bingo operation. The Barona Indians found that these stockholders were members of the management company which currently operates Sycuan Indian bingo in competition with Barona. This management company is known publicly as having been the object of law suits in other States where they conducted reservation bingo. In addition, we have confirmed information that this management company has been tied to several known organized crime figures.

As predicted, when the Ninth Circuit Court opened the door, these operators in San Diego County have expanded beyond traditional bingo into other forms of gambling. In August 1984, at the Sycuan Reservation, the management company began operating a casino-style lounge, featuring variations of illegal blackjack and keno, which they called "Bingojack" and "Bingo Horseracing". The operation was raided by deputies from my department who seized $4,400 in cash and three truckloads of gambling paraphernalia which closely resembled equipment used in Nevada casinos. Twenty-one people were also arrested for state gambling law violations during the raid. Evidence was found indicating that these operators were about to install and start playing illegal variations of roulette and slot machines. I raced to the state courts to file criminal cases while the operators were running to the federal court to file for civil remedy of our seizure. The definition of bingo became the key issue.

With respect to the Barona Management Company, my deputies served search warrants and grand jury subpoenas simultaneously in San Diego County, Los Angeles County, Las Vegas, Nevada and Atlantic City, New Jersey. This followed an investigation which revealed evidence of conspiracy and grand theft, more commonly known as "skimming". This activity involved the general manager of the management company using "shill" players to win large prizes and secretly returning the money to the managers. All the searches produced useful evidence and principal individuals, including an employee of an Atlantic City, New Jersey casino, who were involved in the Barona skimming operation.

On April 2, 1986, Stewart Siegel, the ex-general manager of the Barona operation, pled guilty to four counts of grand theft following his indictment by the San Diego County Grand Jury and became a cooperative witness. As a result, one other person employed by the management company has been charged with three counts of grand theft. By his own admission, Mr. Siegel has known ties to organized crime figures in Las Vegas, New York and New Jersey. Several other members of the Barona management company are also known to have these ties. In fact, an associate of a Los Angeles organized crime family was generally believed to be a hidden owner in the management company.

Mr. Siegel is also being investigated for involvement in two professional contract murders in Los Angeles with possible relationship to the Barona gambling operation.

Louis Cordileone, the boyfriend of one of the "shill" players in the Barona case, has been charged with subordination of perjury, where it is charged that he instructed the "shill" to lie to the County Grand Jury regarding their part in the operation. Cordileone is also known to have organized crime ties.

We have also learned that members of the Barona tribal council received favors from persons who are organized crime figures in San Diego County. These persons, using a "front" from Las Vegas, promised to either let the tribe run their own bingo or they would run it for them. Another group that has approached the Barona tribal council has plans of building a theme park on the reservation which includes a western town and live shows, and wants to buy an adjacent ranch and lease it back to the Barona tribe for a paramilitary "survival game" area.

Without the Barona decision, the Indian lands would not be attractive to these outside groups. Knowing that gambling is a sure draw, many outside groups will be approaching other tribes in the country promising them untold riches.

Bingo games have resumed on the Rincon Indian Reservation in San Diego County. The President and sole stockholder, claims to have invested $50,000 of his own money into the operation and used a $200,000 loan from two investors whom he declines to identify.

Under the previous management company, Rincon Indians did not make a profit and ended up in debt. The operator of that company claims he lost $800,000 himself in the operation; however, it is generally believed they grossed $8 million dollars during the first year of operation.

You can see from the example of just one county in the United States, how organized crime can harm our Indian and non-Indians citizens alike. I, like you, do not want to see a growth in organized crime because we do not have the foresight to stop this problem before it becomes epidemic.

Two bills have been proposed in the U.S. House of Representatives this session of Congress to address the issue of Indian gambling.

I would like to offer my thoughts on these as you consider how to proceed:

- NSA believes that the individual states should determine whether or not gambling (for Indians and non-Indians) is permitted in that state. We further believe that each state should regulate and enforce those laws and regulations. Our members passed a resolution at our 1986 Conference addressing this issue, and a copy is attached for your information.
- We can see from our experience in California that Indian gambling is NOT an issue of Indian gambling in Indian lands. This is an issue for non-Indians alike, as many gamblers are non-Indians, who take advantage of loopholes that permit gambling in Indian lands even though it is NOT permitted in other areas of a state.
- We believe that neither H.R. 964 nor H.R. 1079 go far enough in regulating Indian gambling. We would like to see Congress enact a bill that would: (a) allow Indians to conduct only those forms of gambling already permitted in a state, including bingo; (b) establish a state mechanism to license and regulate the management companies operating Indian gambling.
- If, however, the Congress is going to pass one of the bills pending before them, we urge you to support H.R. 964, with some modifications. In our view, it is the most responsive bill to law enforcement concerns. We do not feel that a National Gambling Commission, as proposed in H.R. 1079 is at all viable, in that it attempts to regulate the gambling activities of 500 Indian tribes and enforce 50 different state laws out of Washington, D.C.

This concludes my testimony.

Again, I thank you for the opportunity to express the concerns of law enforcement on this important issue.

I would like also to thank Ms. Boylan of the Committee staff for her assistance in making the NSA appearance possible. I appreciate her eagerness and openness in making certain that local law enforcement had a voice in these proceedings.

Attachment

NATIONAL SHERIFFS' ASSOCIATION
1450 DUKE STREET • ALEXANDRIA, VIRGINIA 22314 • 703-836-7827

L. CARY BITTICK
EXECUTIVE DIRECTOR

RESOLUTION

Regulation of Illegal Indian Gambling

WHEREAS,

1. Unregulated Indian gambling presents a threat to the public welfare of the nation because it provides new havens for organized crime to operate in total disregard of state laws concerning gambling; and
2. Unregulated Indian gambling represents a threat to the welfare of the various Indian tribes because it may subject the tribes to the corrupting influences of organized crime; and
3. The states have traditionally regulated gambling, as they do liquor, and provide the best means of addressing the threats posed by unregulated Indian gambling;

THEREFORE, BE IT RESOLVED that the National Sheriffs' Association urges President Reagan and the Interior and Justice Departments to support the states in their litigation in the Federal courts to assert jurisdiction over Indian gambling; and

BE IT FURTHER RESOLVED that the National Sheriffs' Association urges Congress to recognize that state and local jurisdiction over gambling on Indian reservations is essential to state sovereignty and should not be taken over by the Federal government; and

BE IT FURTHER RESOLVED that the National Sheriffs' Association urges Congress to enact legislation to provide that the gambling laws and administrative regulations of the states, whether civil, regulatory, or criminal, as presently enacted or as they may be enacted, amended or revised shall be applicable to Indians and their nations, tribes, or bands and to all land owned by or held in trust for Indians and their nations, tribes, or bands, including without limitation regulations governing licensing, operation, conduct, promotion, administration, and disposition of proceeds from gambling as required under state law.

Adopted at a meeting of the Membership,
This 4th day of June, 1986
Reno, Nevada

PREPARED STATEMENT OF C. STANLEY HUNTERTON

It is a privilege to appear before this Committee on an issue which is of great importance to my State, as well as several other states, and which will no doubt become even more important in the years ahead. The volume of gambling, in the United States, both legal and illegal, is constantly increasing. The inherent excitement of chance and risk, combined with the presumption that one will win , makes gambling--for better or worse--a permanent and growing part of our social, economic and political landscape.

I have been asked to address the law enforcement issues which attend legalized casino gaming. Parenthetically, I should make it clear that I do not pretend to any expertise on Indian related matters in general, nor with respect to the particular concerns of those Indian tribes which favor legalized gaming on their land.

However, the issues I will address necessarily come with legalized casino gambling, no matter where the casinos might be located. Therefore, my testimony would be essentially the same whether this Committee were considering control of legalized gambling on military reservations, or in any state of the United States, or on tribal lands.

When the law enforcement and regulatory problems which go along with legalized casino gambling are put in proper perspective, it becomes clear that casino gaming is a poor way to raise public revenue. This may seem an odd remark from someone who has chosen to live in Nevada. Over 40% of my State's operating budget comes from various levies imposed on the hotel and casino industry. Although we are clearly dependent upon legalized gaming, Nevada has also had over 50 years of experience in dealing with this form of economic enterprise. We must remain constantly vigilant to the problems which are never very far away, but we have in fact learned to live and prosper with legalized gaming.

However, the prospect of starting up legalized casino gaming in any jurisdiction, under any form of controls, is something that ought to be carefully examined and probably discouraged at every turn. Even if it is concluded that a jurisdiction should have legalized casino gaming, great care must be paid to the planning and implementation of its regulation and policing.

I had never even been to Las Vegas when, in 1976, an FBI agent came to my office in the Organized Crime Strike Force in Detroit and suggested that the Bureau had preliminary information that the Detroit family of La Cosa Nostra had a hidden interest in the Aladdin Hotel and Casino. During the many months of investigation that followed, which included the extensive use of both electronic and physical surveillance, we were literally learning as we went. Not only had we opened up a relatively new area of organized crime investigation which required us to understand the criminal relationships between people in Detroit and people in Las Vegas, we were also treading upon ground which was quite foreign to people in federal law enforcement. With the exception of two earlier prosecutions, one in Las Vegas and one in Los Angeles, the area of hidden ownership and control of casinos was unknown and unworked.

Having only the most elementary understanding of how the various games of chance in a casino worked, we were also hampered by our lack of knowledge as to how money could be diverted from those games. Similarly, being unfamiliar with casino terminology and procedures, it was difficult to tell exactly how much influence was being exercised by whom, and ultimately whether any of these activities constituted violations of the law.

Further complicating the investigation was the fact that during the late 1970's, a working relationship between federal law enforcement authorities and state regulators was virtually non-existent. Fortunately, this situation has been greatly improved. However, it is still an important fact to keep in mind when considering the form of regulation to be employed for gaming conducted in any new jurisdiction. Among the problems that would be faced by any new regulatory authority, be it a federal commission or a self-regulatory body operated by the tribe, is the fact that those regulators would have to make their own way and earn the respect of existing federal and state enforcement and regulatory bodies before there would be an active sharing of information and cooperation. This "breaking-in" period is not a matter of months, but rather a matter of years. Standing alone this is good enough reason to vest the authority to regulate gaming on Indian lands with existing state authorities.

The Aladdin Hotel case also exposed another problem relevant to this Committee's deliberations. Among the defendants in that case was the corporate entity which owned the Aladdin Hotel and Casino, as well as the casino's general manager and director of entertainment. Although the Nevada gaming authorities quickly caused the removal of the individual defendants from the premises following their conviction, the more difficult question remained, "What do we do when the casino itself has been convicted of a crime?"

Since then, the Nevada legislature has put in place a trustee law which anticipates and accounts for situations such as this. However, at the time, the situation was far from clear, although the State moved quickly to close the casino and force a sale, its authority to do so was far from clear. These issues ended up being litigated at length, and there was no small irony in the fact that one branch of the federal government had caused the State to shut the Aladdin down, while another branch, the judiciary, forced the State to let casino operations continue.

The closure and/or forced sale of a property interest involves significant Constitutional questions. It is my opinion that a general delegation of authority to regulate to either the tribes or to a new federal Indian gaming commission would not give these new regulators the clear authority needed to take over a corruptly run casino. In the absence of such "death penalty" authority, any regulatory system administered by any body is fundamentally flawed.

The Aladdin prosecution was also illustrative of one other important consideration; that is, the potential for political corruption. Two of the suspects were involved in a conspiracy to bribe a Michigan district attorney. In order to enhance the gaming licensing prospects of one of the suspects, the District Attorney was corruptly attempting to expunge a bank robbery conviction which the suspect had suffered many years earlier. Although the evidence was deemed insufficient to warrant the indictment of the district attorney in that case, not too long thereafter he was indicted and convicted for the diversion of federal funds which had been supplied to his office to subsidize narcotics investigations and prosecutions.

Although it is obvious that political corruption and casinos are not necessarily related and that corrupt public officials take money from a wide variety of sources, we would ignore reality if we did not accept the proposition that businesses which involve a high degree of regulation, and which are cash intensive, and which are highly profitable, create the substantial likelihood of incidents of corruption. In my experience in law enforcement, there are no more difficult cases to investigate and prosecute successfully than public corruption cases and a new regulatory body for gaming on Indian lands would be ill-equipped for this task.

I moved to Las Vegas in the fall of 1978 and from that time until 1984, when I moved to Washington to work for the President's Commission on Organized Crime, most of my work with the Las Vegas Organized Crime Strike Force involved casino skimming cases.

Many Nevadan's believed that the increased attention to the role of organized crime in the casinos was the product of a federal vendetta against their state, based on the fact that Nevada's primary business was a crime in most places. A corollary of this belief was that the presence of La Cosa Nostra in Las Vegas casinos was largely a figment of an overly active federal imagination looking for an excuse to wreak havoc in Nevada for the benefit of headlines and self-promotion.

However, now that we all have the benefit of 20-20 hindsight, I know of no responsible individual in the State who believes that organized crime did not have a significant influence in the casinos. Indeed, the evidence shows quite clearly why all of us who live and work in Nevada have come to a common understanding of the attraction that casinos hold for organized crime interests. As Al Smith said, "Let's look at the record."

--In 1970, Meyer Lansky and several others were indicted for skimming at the Flamingo.

--Since 1970, 10 different casinos have been implicated in organized crime investigations.

--Since 1970, seven different families of La Cosa Nostra, the Genevese family from New York, the Cleveland family, the Detroit family, the Chicago family, the Milwaukee family, the St. Louis family, and the Kansas City family have all had documented involvement with various casinos.

--Since 1970, 20 prosecutions have been brought implicating LCN members and/or associates with Las Vegas casinos.

--Since 1970, 75 defendants have been indicted in organized crime cases involving casinos.

Parenthetically, I should add that in my view this state of affairs was not the "fault" of any person or institution. The State lacked the financial resources, investigative tools and interstate jurisdiction to eradicate this problem. Further, until the late 1970's, the U. S. Department of Justice made no substantial commitment to running organized crime interests out of Las Vegas. It should also be noted that several of the federal criminal prosecutions grew out of work done by the State regulators. Today, State gaming regulators are doing an excellent job, and federal enforcement officials have also profitted from the experience of the last ten years. The Nevada experience also needs to be put in perspective by noting that the vast majority of casinos have been and continue to be run honestly.

The reason for the attraction of organized crime interests to legalized casino gambling is made clear by an examination of the documented dollar amounts of skimming in three different cases.

The courier used by the Kansas City mafia to bring home cash from Las Vegas was searched and found to have $80,000.00 traceable to the Tropicana Hotel. The extensive surveillance which proceeded the search established that this courier made his run to Las Vegas and back at least once per month

In a separate case involving the Stardust Hotel and Casino, the government was able to establish that not less than $100,000.00 per month and perhaps as much as $200,000.00 per month was diverted from the table games (primarily Craps and Blackjack) for the benefit of organized crime interests.

In one of the earliest casino skimming cases, it was statistically established that at least $400,000.00 per month was being removed from a consortium of four casinos being operated under common ownership. In that case, the skim was executed solely from slot machine revenues, and during the scheme's existence at least $7 million was diverted

The period from the late 1970's through the mid-1980's taught all of us who lived and worked in Nevada that the mafia was ready, willing and able to infiltrate casinos, and we learned why they were so attracted to the casinos when the dollar volume of skimming was established. However, the most important lesson we learned was that once an illegitimate influence becomes entrenched in a casino, it is extremely difficult to remove. These illicit influences can either appear in the form of the personnel who own and operate the casinos, or with respect to the sources of financing for the casinos. Both questions of personnel and financial integrity require the most thorough and sophisticated possible background investigations of those who would own and work in casinos, as well as those who would finance construction and operation.

Repeatedly, we witnessed the phenomenon--which we could only discern clearly long after the fact--of one casino owner or operator being forced out because of organized crime ties, to be followed by another whose links to the mob were just as strong. Similarly, the Central States Pension Fund of the International Brotherhood of Teamsters had just under 20% of the Fund's money invested in Las Vegas. This permitted the mafia members who influenced the Fund to wield unlicensed, improper and corrupt influence over the conduct of casino gaming. I raise this point for the Committee's consideration even though the Fund no longer finances any casino operations in Las Vegas and is unlikely to finance casinos anywhere again. The reason I do so is that if casino gaming becomes extensive on Indian lands, someone will have to finance and construct large buildings. Just as the operation of casinos is a highly specialized business, the problems involved in constructing and financing them is also a highly specialized business. Again, a newly formed regulatory body could be vulnerable to having one or more groups come to dominate this market without being sure that they would be operating in the best interest of the intended beneficiaries of this legislation or the patrons of the casinos.

In sum, after 11 years experience in federal law enforcement most of which was spent dealing with issues involving organized crime and gambling, it is my conclusion that an effective state regulatory system which stops illicit interests at the front door via thorough licensing and background examinations is a far more effective and cheaper means of insuring that casinos are operated honestly than any amount of law enforcement pressure once those interests have become entrenched. With reference to Nevada, there is no question in my mind that the regulation of gaming on Indian lands should be under state control.

I thank the Committee for its attention and would be glad to answer any questions.

BIOGRAPHY OF C. STANLEY HUNTERTON

Stan Hunterton graduated from Syracuse University College of Law in 1974 and was recruited to join the United States Department of Justice through the Department's Honors Program.

Mr. Hunterton was first assigned to the Organized Crime Strike Force in Detroit, Michigan. From 1975-1978, he worked on a wide variety of investigations and prosecutions involving labor racketeering, narcotics, gambling and political corruption. While in Detroit, he was part of the group of prosecutors and FBI Agents who developed the Aladdin Hotel and Casino case. This was only the second hidden interest case undertaken by the Department and all defendants, including the corporation itself, were convicted.

From 1978-1984, Mr. Hunterton worked in the Las Vegas, Nevada Organized Crime Strike Force specializing in hidden interest cases. He also returned an indictment against the now deceased Anthony Spilotro, the Chicago mafias top representative in Las Vegas.

Later, Mr. Hunterton became Deputy Chief Counsel to the President's Commission on Organized Crime where he worked on issues such as money laundering and organized crime groups of Asian origins, as well as policy questions concerning gambling.

He returned to Las Vegas in 1985 and entered the private practice of law.

PREPARED STATEMENT OF JEROME H. SKOLNICK

My name is Jerome H. Skolnick. I hold Ph.D. in Sociology from Yale University, and I am currently a Professor of Law (Jurisprudence and Social Policy) at the University of California, Berkeley. I have written a number of books and articles over the years, but I claim expertise neither in the law of Indian sovereignty nor in the history and culture of native Americans.

I am here today primarily because of my writings in the field of criminology and particularly in the legalization and control of gambling. My major work in that area is a book published by Little, Brown called House of Cards, a title which suggests the difficulties of regulating gambling in any of its forms. Because my studies of gambling have sensitized me to the extraordinary difficulties of controlling both the operators and operations of games of chance, I am here today to testify in favor of Senate Bill 555.

From the 1960's to the present gambling has become a phenomenal growth business in the United States with an almost across the nation acceptance of some form of gambling revenue. In 1985 wagering and legalized U.S. commercial gambling reached a $159 billion with an estimated additional $32 billion being waged illegally. Of that, gross revenues from the nation's casinos, racetracks, state lotteries, and other commercial games in the United States amounted to

$20.9 billion. Gross gambling revenues in 1985 exceeded that of U.S. Steel which reported $18.4 billion in annual sales during the same year.

And that brings me to the question of regulating gambling on Indian reservations, because I think it very important to distinguish between the sovereign rights of Indians to profit from the establishment of various high stakes gambling enterprises, and the interests we all have, including native Americans, in ensuring that gambling enterprises are controlled and operated as honestly as technology and intention permit. Because gambling, particularly casino gambling, has been what I have called a "pariah industry" all gambling entrepreneurs, as well as the general public, benefit from maintaining and adhering to the tightest possible controls.

As the recent California v. Cabezon decision indicates, the regulation of gambling on Indian lands is a difficult issue. The Cabezon decision had important implications. It meant that various gambling enterprises, in addition to bingo, might be developed on Indian lands. Although the Court denied the states the sovereign right to impose gaming controls on Indian land, it clearly stated that the Congress has the right to regulate -- even to forbid -- Indian gambling enterprises and to delegate such authority to the states. That possibility has led to two policy possibilities, Senate Bills 1303 and 555. There is something to be said in favor of both bills, since each tries to balance concerns for Indian hegemony, self-sufficiency and economic development with the need to ensure that gaming is conducted honestly, free from illegal influences, and that tribes are the primary beneficiaries of gambling operations. Of the two, I believe the balance tips strongly in favor of Senate Bill 555. It offers a tighter and more comprehensive regulatory scheme while allowing organized Indian tribes recognized by the Interior Department to be licensed to run bingo operations in the interests of Indian economic development and self-sufficiency. Senate Bill 555 maintains more restrictive licensing requirements for bingo and associated games, has a more rational and effective structure for the gaming authority and offers appropriate discretion to the gaming authority concerning the exercise of its judgment over the granting of licenses.

But the most pronounced policy difference between the two bills is this: Senate Bill 555 requires that Class 3 gaming operations comply with state regulations and all state requirements regarding casino gambling and pari-mutual betting. The states of Nevada and New Jersey -- and Great Britain, which I have also studied in this respect -- have through sad experience learned that the legalization of casino gambling is only possible when very strict controls are instituted and maintained. Moreover, controls develop with time because the control problems are acute and complex. Security, whether in the casino business or any other, develops in response to experience with clever and innovative criminals. So permit me to say a few words about why casino gambling is so difficult to control.

In contrast to other businesses, casinos do not have inventories of goods that can be compared to cash received. If the Stratford winery ships 50 cases to a wholesaler, a record of the sale is made showing that the warehouse has fifty fewer cases of wine, to whom the wine was shipped and the amount receivable. When a Macy's store clerk sells a necklace, a sales slip is prepared and the sale is recorded into a register or computer. When IBM leases a computer a contract is prepared. The winery, Macy's and IBM record their sales and leases in their financial records; independent auditors perform test checks of sales slips, cash register tapes and leases and compare the test results with the financial records. But when a blackjack dealer in a casino pays off on a winning hand, she simply pushes some chips across the table. There is no paper record of the transaction. This absence of a paper record is the essence of the control problem. Because of it casinos rely on three other forms of control -- audit of play, surveillance and licensing. Each of these has limitations and potential for fraud and corruption.

Let's discuss audit controls first. Because it is impractical to record each gaming transaction, casinos rely on aggregate amounts of cash, checks and gaming chips to determine profit and loss. Each table starts with a chip inventory at the beginning of the shift. The chips are sold to players in exchange for cash or checks or credit. As the shift progresses, losing bets are collected and placed in a locked box. Winners are paid from the inventory. Thousands of these unrecorded transactions, amounting to millions of dollars, are exchanged at each table each day.

It is not really difficult to calculate the gross profit of a table for each shift. You start with the beginning chip inventory, say $100,000. You subtract the chips remaining at the end of the day, say $80,000, and you are left with $20,000 in missing chips. Let's say that you have collected $50,000 from the bettors during the shift. Subtract your $20,000 in missing chips and you show a gross profit of $30,000.

This simple calculation is however based on a number of assumptions, for which controls in turn have to be developed. It assumes: first, that the chips at the beginning of the shift have been properly counted and recorded; second, that the amount of chips remaining at the day's end had either been been exchanged for cash or checks, or paid to winning patrons; third, that all losing wagers had been properly collected; fourth, that all cash and checks had been properly exchanged by the dealer for gaming chips; fifth, that all cash and checks collected by the dealer had remained at the table and had been delivered to the counting process. sixth, that there had been no misappropriation of chips, cash or checks by either casino employees or patrons; seventh, that the rules pertaining to how the game is to be played had been followed; eighth, that equipment, such as dice or a roulette wheel, was not tampered with; ninth, that such equipment was used according to the rules; tenth, that any chips sent from the cashier's cage to the table or sent from the table to the cashier's cage actually reached their destination and had been properly recorded. The reported gross profit and loss, with accompanying tax consequences, depends upon the continued integrity of these assumptions.1

There is no simple way to insure that integrity. In addition to various forms of audit and complex statistical control measures, casino control authorities employ surveillance and licensing. (I discuss these measures at some length in House of Cards.) Briefly, casinos require watching by sophisticated observers. Tables are monitored by hidden cameras, humans hidden in the ceiling, and pit bosses who

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1. see Michael A. Santaniello, "Casino Gambling: The Elements of Effective Control," 6 Seton Hall Legislative Journal 23-39 (1982).

observe on the casino floor. All of these controls may prove fruitless in the presence of an astonishingly accomplished group of schemers. To call them crooks is utterly to fail to convey the depth of their cunning and technical sophistication. The most intricate technical "scam" I have ever seen, because of its mechanical complexity, is the gaffed blackjack "shoe." The "shoe," a small box that holds several decks of cards, is employed to prevent the casino from cheating the player. If, through an accomplice, a player can smuggle in the type of shoe I am about to describe, the player cheats the casino.

Inside, the shoe is a marvel of optical engineering. There is a prism located on the front end of the shoe that captures the image of the corner of the next card to be dealt, revealing its identity. Tiny lamp bulbs surround the prism. The bulbs are lit by a player with a miniaturized transmitter hooked up to a miniaturized receiver inside the shoe. The bulbs illuminate the reflected image of the corner of the card. The illuminated image is then passed through the prism through a set of lenses, approximately midway up the inside of the shoe. These lenses direct the image through still another set of lenses to two mirrors at the back of the shoe. These mirrors invert and transmit the image back up to a third mirror, in turn reflecting it through a tiny window in the apparently opaque bottom of the right-hand rear of the shoe. With a flick of the transmitter, and by positioning himself at "first base," the cheat can see in the window the illuminated image of the telltale corner of the next card to be dealt. This, or course, provides an overwhelming advantage. This fabulous gaffed shoe was discovered only by chance in 1976 when an alert and suspicious pit boss wondered why his table was losing, and thought that the shoe felt a bit heavy. He decided to look inside, and found the apparatus described.

The shoe was examined by the full-time electronics expert who works closely with the Law Enforcement Division, and a description was sent out to alert the industry. In the year following, no other such shoe was discovered. The expert nevertheless believed that several lighter and more sophisticated models might be in operation in other casinos. They just weren't found. I have observed similarly complex and technologically sophisticated schemes for defeating controls over slot machines and keno games.

Licensing is the third control measure, in addition to _auditing_ and _surveillance_. Licensing is the linchpin of casino control. To license someone is to affirm their character to hold an equity interest, or to run or work in a casino. This can be a difficult and complex business. Some applicants are clearly suitable. Others are clearly unsuitable. Problems arise, however, with the seemingly suitable. Thus, for example, I closely observed the licensing investigations the Nevada Gaming Control Board conducted on Allen R. Glick, an attorney and former U.S. Army Captain who had completed a tour of duty in Vietnam. Mr. Glick's meteoric rise to prominence was investigated thoroughly and honestly by the Nevada Gaming Control Board. They could find no wrong. Several years later, however, Mr. Glick was found to be a front for organized crime interests in five casinos.

So even with the best controls, it has often been extremely difficult for states to eliminate entirely the influence of organized crime on casino gambling. It is no accident that casino gambling was for many years legalized in only one state and has only recently been legalized in New Jersey. Any state that begins to consider legalization, as for example New York did several years ago, must conclude that the possibilities of undermining control are so considerable that the benefits of legalization may simply not be worth the potential costs. Those states that have legalized casino gambling have over the years built up increasingly stringent control mechanisms. Not perfect, mind you, but mechanisms which, at a minimum, any other entity seeking to develop casinos should have to be prepared to meet.

How should this background affect our consideration of gaming control on Indian lands within states, and catering to the general public? Although I recognize the tribal interest in gambling revenues and the wise Congressional goal of encouraging tribal self sufficiency and economic development, I have serious doubts as to whether anything but the most tightly regulated casino gambling and other forms of high stakes gambling are the best instruments for achieving these desirable ends. The risks it seems to me are quite substantial. All parties, the Indian tribes and the non-Indian residents of states, benefit by tighter regulation. The gambling industry ultimately depends upon public trust both for consumption of its product, and for purposes of capital expansion. If banks think they are dealing with a crooked business, they are disinclined to lend money. Run-down and shabby casinos don't make money and it is not in the interests of American Indians or anyone else who goes into the casino business to be mistrusted. Thus, every interest associated with casino gambling suffers from a public perception of organized crime infiltration and crookedness. The Nevada Gaming authorities investigation and licensing procedures will not assure that casino gambling is entirely free of organized crime influence. Less stringent control structures and practices will engender even greater suspicion and the possibility of criminal infiltration, with associated victimization of all concerned -- Indians and the public they invite to gamble on Indian lands.

There is no reason, of course, why native Americans should not benefit by our national propensity to gamble. Still, it is important to recognize that games domiciled on Indian lands will draw overwhelmingly on non-Indians to gamble. These non-Indian players are entitled to the protection of tight control and honest games, whether or not the gambling takes place on a reservation or on the soil of the state of Nevada. If in the boundaries of a single state we have tighter rules off the reservations and looser rules within, it is virtually inevitable that the looser rules will draw unsavory elements and crime to the reservations. Such an outcome can scarcely be in the interests of Indian economic development.

Finally, if Indians on the reservations run casinos, or more likely have them run for them, the Indians are willy-nilly catapulted into the positions of gambling entrepreneurs. In my studies of the casino gambling industry, I have noted that over the years many of those in the industry have strongly resisted regulation. Nevertheless, as time passed the more successful casino owners and managers began to perceive that tight regulation was actually to the industry's benefit. It facilitated both capital expansion and confidence by consumers that they weren't being cheated. Individual casino owners and entrepreneurs might resist regulation from time to time when they feel it imposes costs on them. Nevertheless, they have come to understand what is both the paradox and reality of gambling regulation -- the casino industry and those who run it, are actually its major beneficiaries. So, in time, will the new generation of native American entrepreneurs.

BIOGRAPHICAL SHEET

Jerome H. Skolnick is the author of House of Cards: Legalization and Control of Casino Gambling, a highly praised account of the theory and practice of casino gambling; Justice Without Trial, a study of police which won several prizes; Politics of Protest, a report of his task force to the National Commission on the Causes and Prevention of Violence; and, most recently, with David H. Bayley, The New Blue Line: Police Innovation in Six American Cities.

Professor Skolnick, a sociologist, is Professor of Law (Jurisprudence and Social Policy) at the University of California, Berkeley, where he was director of the Center for the Study of Law and Society for ten years. He holds the highest achievement awards of the American Society of Criminology and the Academy of Criminal Justice Sciences.

PREPARED STATEMENT OF DON CALVIN HILL

Mr. Chairman and members of the Committee, I am Don Hill. During the last 7-1/2 years I was employed as an Assistant United States Attorney and Deputy District Attorney in Reno, Nevada.

While serving as a prosecutor, I have been involved in slot machince cheating cases ranging from the simplest forms to the most sophisticated forms involving organized criminal groups.

An opportunity to make substantial sums of money quickly and easily has always drawn creative criminals and not surprisingly, the opportunity to make money cheating slot machines has attracted a fair share of enterprising individuals.

For the individual involved in slot cheating profits range from a few dollars to millions of dollars. A former chairman of the Nevada Gaming Control Board has estimated in 1984 the yearly loss to slot cheaters at $20 million.

Historically, the progression of slot machine cheating methods have closely followed the technology in manufacturing the latest designs for the so-called "uncheatable machines."

In the 1950s and early '60s when the majority of slot machines were purely mechanical, various types of shims and hooks were used to align winning combinations and collect jackpots.

With the development of electro-mechanical slot machines, the methods of cheating have changed to keep pace with the increasing jackpots available.

Cheating methods on electro-mechanical slot machines included using keys to open the machines and physically aligning the reels, (called "swinging doors"); using coins attached to strings, for free play (called "yo-yos" or "stringing"); drilling the cabinet door with battery powered electic drills, using wires to stop the machine's mechanical clock, and wires to align the reels; and the use of wires inserted from the outside of the machine to stop the mechanical clock and align the reels.

With the arrival of micro-chips and printed circuits, the latest generation of "uncheatable" slots hit the market. When fully computerized electronic machines were developed, it was discovered by cheaters that a strong magnet could be used to throw an internal switch to shut down the internal computer and the reels aligned with a wire without setting off the computer's anti-cheating devices all done without opening the door. The advance in technology simply made cheating easier.

The first known cheating of the fully computerized video slot machine was when the world's largest jackpot of $1,700,000 at Lake Tahoe was found to have been rigged. Nevada Gaming Control agents were able to prove that other video slot machines, which were thought to be uncheatable by the gaming industry, had been set up for $400,000 (a prior world's largest jackpot) and $250,000. Cheats were able to use an electronic device to project a jackpot on the video screen with no apparent tampering.

The casino and the slot machine manufacturing industry has developed many anti-cheating systems and devices including:

1. Door alarms
2. Double locking systems
3. High security locks and keys
4. Video surveillance systems

All have been beaten by slot cheaters.

The prosecution of slot machine cheats has been, and will continue to be a difficult challenge. The difficulty begins with obtaining evidence and testimony concerning the cheating incident and carries through to the general perception of some jurors that taking money from a slot machine, that takes your money, should not be a crime. With the entrance of traditional organized crime and high-tech criminals into the lucrative field of slot cheating, the challenge is formidable.

While I was working as an Assistant United States Attorney, in 1984, the problem of attempting to stop the sophisticated slot machine cheaters resulted in the formation of a task force, in which I coordinated the efforts of agents with the Nevada Gaming Control Board, Federal Bureau of Investigation and Internal Revenue Service. The resulting investigation proved that the problem of slot cheating by non-casino employees had been greater than ever before suspected. A total of 19 people were indicted on slot machine related charges as a result of the investigation. Seventeen of those people either plead guilty or were convicted after an eight week trial, and two people have never been found by authorities. Ross Warner Durham, a defendant who was the "mechanic" for the slot cheating ring, plead guilty and testified as a government witness at trial. Mr. Durham, along with other witnesses, revealed the existence of a wide network of slot machine cheaters encompassing individuals living in several different states, and slot machine cheating activities which included both New Jersey and Nevada. Mr. Durham testifed at trial that his best estimate of the total take of the John Vaccaro slot machine cheating gang, which he was involved with as a major partner, was approximately $20 million. Mr. Durham testifed that he had been involved in approximately 1,200 instances of rigging slot machines. Testimony at trial revealed that dozens of slot machines with jackpots in excess of $100,000 had been cheated and the proceeds split between the members of the gang. The slot machine cheating gang run by John Vaccaro (who has recently been indicted as a member of the Los Angeles "La Cosa Nostra"), had been operated with amazing ease during the five years prior to their indictment. This was in spite of the security system, sophisticated surveillance systems, and the latest in "uncheatable" slot machines.

The only way the profitability or integrity of any slot machines and/or video machine operation can be protected is through the strongest regulation. Regulations, to be effective, must come in the form of:

I. Strong regulatory agencies, providing:
  a. Control over gaming management;
  b. Control over hiring and firing;
  c. Extensive and continuous audit of all operations.
II. Experienced management
III. Surveillance and private law enforcement.
IV. Strong criminal laws enforced by specially trained law enforcement personnel and prosecutors.

The success or failure of the regulation of a slot machine operation will depend on several important factors: Funding for judges, courtrooms, prosecutors, law enforcement, and other regulatory functions; special laws to cope with the problems of slot cheating; and independent regulators who are not being controlled by the regulated.

With strong controls, cheating will occur, money will be stolen from a slot machine operation, profits will be lost.

Without strong and experienced regulators, money will be skimmed; slot operations will attract every type of known cheater, ranging from the sluggers with their lead coins, to the organized crime boss with his high-tech cheating methods. Profits will be severely damaged by the inability to control cheating and the integrity of the slot machine operation will be severely damaged.

H.R.964 and S.555 allowing for the regulation of slot machine gambling on tribal land by the states gives the states the options of deciding whether they wish to have that type of gambling inside their borders. The states will also have the opportunity to fund the expenses associated with regulatory and law enforcement activities should they choose to allow slot gambling. The states will have the ability to utilize their own experience and expertise in enacting laws consistent with their experience with gambling.

In an industry whose only product is money, regulation is the key to success.

BIOGRAPHICAL SHEET

Donald Cavin Hill, Esq.

Don Hill worked as a prosecutor for 7-1/2 years. He was a Deputy District Attorney with the Washoe County District Attorney's office in Reno, Nevada for 3 years, and spent 4-1/2 years as an Assistant United States Attorney in Reno. As a prosecutor with the District Attorney's office, Mr. Hill worked on numerous cases involving cheating at gambling, and received a broad exposure to slot cheating in general. As an Assistant United States Attorney, Mr. Hill prosecuted the largest slot machine cheating ring to be brought to justice. In that position, he coordinated efforts between the State of Nevada Gaming Control Agents, F.B.I. and Internal Revenue Service investigators. The investigation resulted in the indictment of 19 people, and resulted in the uncovering of a sophisticated slot machine cheating network, which included organization and control of the group by a reputed member of the mafia.

Mr. Hill has been engaged in the private practice of law in Reno, Nevada since February, 1987. Mr. Hill is a native of Nevada and was employed as an engingeer for five years prior to going to law school.

PREPARED STATEMENT OF PHILIP P. HANNIFIN

Mr. Chairman, I am privileged to appear before the Committee today to share with you my impressions of the proposed legislation concerning gaming within Indian reservations.

It seems clear to me that the United States Supreme Court decision in CABEZON will significantly effect my state, Nevada, and several other states that currently tolerate some form of gambling activity. Accordingly, it seems to me necessary that the Congress provide some means of regulating the structure and process of gambling if it is to be permitted on tribal reservations. Further that any such regulation be conformed to state law and regulation. Gambling should not be permitted in contravention of existing state laws or mores and Congress should not establish a scheme by which gambling would be allowed without experienced regulation. For example, it would be possible in Nevada for casinos standing within one hundred yards of each other to be respectively regulated and unregulated.

Gambling has for hundreds of years been a controversial and discouraged type of behavior. Perhaps of even more concern to the general public than the moral question has been the issue of the honesty of the gambling activity. In my view the most essential aspect of regulation must be the emphasis upon the honest conduct of the game, be it a horserace, poker or slot machines. To give substance to this strict regulation requires a high level of effort and expense to train agents in such things as Rules of Evidence, Search and Seizure and Laws of Arrest. This " consumer protection " is primary as a requisite for gambling is a business dependent upon large volume and thus the confidence of the public is required. If there is distrust or a lack of credibility then revenues surely will be limited and insufficient to provide Indian government with funds to finance the benefits conceived of in the legislation.

To obtain honesty in the games and honesty in the remission of taxes and fees it is essential to limit the participants in these endeavors to those who have a history, habits and associations in concert with these goals. Such limitatiion is achieved by means of a severely thorough examination and investigation prior to licensing. I am sure other witnesses will call to your attention the need for such stingent measures, for while it is not perfect it greatly enhances the probability of honest games and honest payment of taxes.

Nevada's history is the best evidence that this process is both required and very difficult. Despite sophisticated legislative schemes and experienced administration, Nevada has suffered from criminal conspiracies and penetration into the gaming business by organized crime. One may ask why it is so hard to identify criminally inclined individuals before they get into the business. It may be illuminating to understand that fraud and conspiracy are not usually presented to us in blatant form and to recall that one such man was at the time of licensing, a respected Minnesota banker and civic leader. Another, a former army officer, attorney and successful land developer. It may be further asked why it is so hard to determine that an honest game is being presented. Those of us who have seen even an amateur night magic show or those of us who have seen Sigfried & Roy make an elephant or a tiger instantly disappear from the view of a thousand people watching a Las Vegas stage, can appreciate the difficulty of discerning slight-of-hand and the greater difficulty of proving that it happened. Add to this the increased complexities for investigation that occur when employees and customers combine to cheat other customers and [illegible] business; mix in the possibility that " rigged " computer chips have been substituted into the circuitry of electronic gaming machines -- now the dim outlines of the size of the problem begins to emerge.

One more thought for your consideration is that Nevada has experienced street crime rates in excess of what might be expected absent the gambling environment. In this context it must be pointed out that tribal reservations are surrounded by non-Indian communities and jurisdictions that will ultimately bear the expense and penalty of the crime phenomena.

As an aggressive businessman I welcome the potential opportunities that will result from sound legislation. However, as a prudent businessman I urge you to give full recognition to state laws and mandate sound systems of regulation and control. Thus I support the wise and balanced compromise represented by S.555

PREPARED STATEMENT OF JOHN O'NEIL

Mr. Chairman, Members of the Select Committee, good afternoon. I am John O'Neill, Executive Vice President of British American Bingo, a Tribal bingo management company located in Phoenix, Arizona. Currently, British American Bingo (or B.A.B.) manages three Tribal bingo ventures in Auburn, Washington, Lemoore, California, and Albuquerque, New Mexico.

British American Bingo is a wholly-owned subsidiary of Bass P.L.C., one of the largest companies in England. Bass P.L.C. was founded in 1775 as a local brewer and is now Europe's largest brewer. Those of you who have visited England will almost certainly have seen if not visited one of our 8,000 pubs and restaurants. Bass also operates very extensive leisure-related facilities, including hotels and vacation resorts. Additionally, one of Bass's smaller companies owns and operates 80 commercial Bingo Clubs throughout Great Britain

The English Bingo industry was established just after World War II. It is now a mature profitable industry employing thousands and providing service to hundreds of thousands of customers. The industry is closely supervised by the Gaming Board of Great Britain through a well-developed and inter-related system of operative licenses, club licenses, field visits by Gaming Board Inspectors, and regulations developed within the general aegis of the Gaming Act.

Noting the development of Tribal commercial bingo in the United States, Bass established B.A.B. here two and one half years ago. Since that time, we have consistently supported the enactment of sensible legislation to regulate Tribal gaming. Although the advent of commercial bingo in the United States is the unique product of Tribal sovereignty and Indian ownership, we see many parallels in the business development of a Bingo industry in our two countries.

Bass, and B.A.B., with its long-standing financial expertise and management strength, is by nature honest, well disciplined and conservative. We feel that, in both its developmental and mature phase, this Indian Bingo industry will benefit from the involvement of companies such as ours. However, we are accustomed to and seek a reasonably stable environment with some acceptable forms of protection including regulation, arbitration, and grievance and dispute resolution. We are not comfortable with an entirely unregulated environment which like all immature industries, has attracted along with the truly talented, a host of others, including the unscrupulous, the incompetent, and the dishonest all pursuing a get-rich-quick scheme.

My company is still learning in this American market. We have followed the arguments that Indian bingo will be attractive to organized crime. We don't rule out this possibility even though our experience suggests that it is not especially likely, at least not in the near term. The real and present problems in this industry are those shared by all retail industries - theft, pilferage, product "shrinkage", incompetence and dishonesty at all levels. All responsible management teams, whilst seeking to minimize these problems through selection, training, and motivation, still keep a weather eye open for employee frauds and develop regulations and control systems to counter these.

In its current form, this industry is at risk. Many contracts are hedged in by uncertainty - this was certainly the case before the Cabazon-Morongo case, and in some instances the relationship between the Tribe and the management company is not a happy one. The industry is basically open to anyone, there is no ongoing supervision by an experienced central body - no gaming Commission. It encouraged a get-rich-quick environment and the principal losers are the Tribes and the customers who have had to endure rudimentary facilities and the occasionally discovered malpractice. Some Tribes have the resources available to prevent this, others, probably the majority, do not.

Properly managed, a Tribal bingo business can and will help the Tribe tackle its various and many problems. This correct management will be stimulated by the establishment of controlling legislation and a National Indian Gaming Commission.

The key to a successful industry does not lie in establishing an exact contract-formula, but in providing a framework of control and operative licenses, game licenses, with the necessary background checks. More important is the ongoing examination of the industry and those working in it and the establishment of a more reasonably secure environment. This takes time.

B.A.B.'s preferred position is for flexible negotiated terms tailored to each Tribe's circumstances followed up by informed, experienced, consistent standards of supervision by a National Commission. Rigid and overly limited contractual terms, such as 5 year terms and 30% profit share (which, under a previous proposition, when carefully analyzed works out to be really a 23% profit share) are prohibitively restrictive. Such rigid terms prevent the increased capital investment to build the attractive facilities we believe to be necessary to foster a long term industry. They favor Tribes that have better locations, while denying the benefits of bingo to Tribes at more remote locations or facing competition. But while such restrictive limitations would deter companies like mine that seek a true maturation of the industry, they would not particularly affect the get-rich-quick merchants who build cheap, exhaust the market, and then get quickly out. They perhaps regard anything over three years as a bonus.

In any event, strict formulas by themselves are not much of a detriment to the unscrupulous. Legal and accounting manipulations can be devised to get around the letter of the law. The true strength of this legislation lies in its creation of a knowledgeable and active regulatory Commission that will protect the fair and honest games and flush out those that are not.

Although we would prefer as much flexibility as possible to meet the varied demands of the market, B.A.B. can support the 7 year contract term and 40% profit share provisions contained in S. 1303 as fair and workable. We believe we could meet those terms and still operate the three games we now manage.

I am aware that the issues being considered here go beyond the Indian Bingo industry and encompass the much larger issue of Class III gaming. I hope that these larger issues can be satisfactorily resolved so that this legislation can proceed and Indian bingo may also advance beyond its current unstable phase.

This transition from an immature "anything goes" atmosphere to a mature, honest self-regulating industry is a necessary evolution. Those who prefer the "anything goes" atmosphere do not welcome this legislation. My company urges that a solution be found and that legislation be enacted which will provide a more secure environment wherein can grow a well-disciplined, long-term and beneficial Tribal gaming industry.

Thank you.

PREPARED STATEMENT OF BERTHA J. TURNIPSEED

I wish to thank the committee for the opportunity to appear and testify on the proposed Indian Gaming Reglatory Act.

The Puyallup Tribe appreciates the Federal Policy which reaffirmed the Federal committment to Tribal Self-determination, self-government and self-sufficiency. This policy is consistent with Congressional Acts such as Public Law 93-638 (the Self-Determination Act), the Buy Indian Act, and Indian Re-Organization Act, and numerous others.

The Puyallup Tribe of Indians endeavors to make use of these policies through effective management of local resources, creation of appropriate Tribal enterprises, and promotion of private, Tribal member development and investment. A more appropriate, civic-minded approach to the role of Tribal government is considered that limits direct involvement in for-profit enterprise and regulates the promoted growth of private sector economic development through strong economic policies and incentives.

This free enterprise approach to tribal government has been very successful, especially relating to the operation and management of tribally licensed bingo halls. Virtually all tribal objectives regarding employment creation, revenue development and industrial growth are furthered through this approach. Bingo halls, and the economic opportunity generally, are managed within a strict definition of for-profit enterprise. The result has been economic success, creation of new revenues to the tribe, and stability of employment for a large sector of the local tribal members labor force.

The revenues gained through taxes and licensing fees funds the various aspects of tribal government operation, including administration, law enforcement, planning, and contribution to a variety of social service programs. The federal policies, and tribal goals, of self-determination, self-government, and self-sufficiency are all widely demonstrated and furthered through the success of this approach.

The Senate Select Committee on Indian Affairs is now considering legislation designed to regulate Indian gaming activities. The Puyallup Tribe urges that any legislation preserve the system which it currently uses successfully ingaming operations in Tacoma, Washington. Under that system, individual tribal members are licensed by the tribe to own and operate bingo games on Indian lands under tribal regulations, and their revenues are then taxed by the Tribe to raise tribal revenues. This system provides full regulation of the games by the Tribe, and retains all of the profits among the tribe and its members with no funds flowing to outside, non-Indian interests. It is a model which has proven stable and successful for the Puyallups. We urge that any Senate bill be drafted to preserve the benefits of the Puyallup system by "grandfathering" any bingo games owned by tribal members and licensed by the Tribe.

THE PUYALLUP TRIBE HAS ESTABLISHED A SUCCESSFUL SYSTEM FOR LICENSING, REGULATING AND TAXING BINGO GAMES OWNED BY TRIBAL MEMBERS.

In 1980, the Puyallup Tribe enacted both a bingo ordinance and a gaming ordinance to license and regulate gaming on its reservation lands. The ordinance was drafted in close consultation with officials from the Bureau of Indian Affairs, and subsequently approved by the Secretary. It provides for licenses to be issued by the tribe to tribal members who own and operate bingo games under tribal regulation.

In addition, the Tribe imposes a tax on the bingo games of 17 1/4 percent of gross profits. This is in addition to an annual bingo license fee and a regular business license fee. The taxes and fees raise a significant amount of funds for the Tribe, almost $550,00 per year. This constitutes by far the major component of all monies which the tribes receives from sources other than the federal government. The very ability of the Tribe to function as a government directly depends on its revenues from the bingo taxes and fees.

The approach taken by the Puyallup Tribe in regard to bingo games is consistent with its approach in other areas. The Puyallup model is to license and tax individual enterprises without becoming involved in the actual sales or business operations. According to the Chairman, the philosophy of the Tribal government is to tax and regulate — i.e., to govern — rather than to operate business itself. The Puyallup Tribe, like the United States and most states, has chosen this system of regulation and taxation of private business, rather than the alternative of operating its own public business. It is a choice that should be respected.

The Puyallup model has encouraged individual enterprise and initiative among tribal members, and resulted in three highly successful bingo operations on the reservation. These games employ a total of 115 persons, over half of them Indian, and many of those tribal members. The individual owners — not the Tribe —are at risk in the construction and operation of the games. They are able to operate the games free of tribal politics. And the profits of the games not paid to the Tribe in the form of taxes are retained by the tribal members — and their extended families — who own and operate the games.

In part this choice was made because the Tribe did not wish to take on the expense and risk associated with the financing and construction of a new business venture. The amount of debt necessary to undertake a bingo operation would shackle the Tribe for years to a bank or non-bank entity that would put up the front money. And in part the Tribe did not wish to yield control of a mangement company that might have little long-term committment to the Tribe and its goals.

Further, the Tribe's regulation of these games has been successful. The Tribe's Gaming Control Board licenses and inspects the privately owned games and has, when necessary, mediated disputes between operators and patrons or employees. In one case, the tribe closed down a gaming operation that was in violation of tribal regulations. Further, there has never been even a suggestion that the tribally regulated Puyallup games are anything other than completely honest. The total lack of corruption and absence of even the suspicion of any influence of organized crime is undoubtedly due, at least in part, to the fact that the owners and operators are tribal members who are committed to the welfare of the Tribe, not some outside influence there simply to manage a game and take away a percentage of the profits.

THE LEGISLATION SHOULD PRESERVE THE PUYALLUP SYSTEM OF GAMING REGULATION.

One of the stated purposes of the Indian gaming bills is the goal of promoting tribal economic development, tribal self-sufficiency, and strong tribal government. Yet, should the legislation foreclose the Puyallup Tribe from licensing tribal members to operate individually owned games and taxing the profits of those games, it would sound the death knell for one of the most successful instances of tribal self-government and economic self-sufficiency in the country.

The Puyallup system has important benefits:

> All profits of the bingo enterprises are retained within the Tribe and its members, rather than hundreds of thousands of dollars flowing off-reservation to non-Indian management companies
>
> Individual enterprise and initiative among tribal members is encouraged and rewarded through a system of regulated private enterprise.
>
> The risk — both financial and legal — to the Tribe is minimized.
>
> The Tribal government acts as a sovereign — exercising powers of regulation and taxation — rather than a business operator, a role for which many tribal governments are ill suited.
>
> There is no outside influence from non-Indian management companies which, even if regulated, still pose the threat of acting as divisive outside interests that may not have the welfare of the Tribe as their primary goal.

Proposed legislation that denies this free enterprise approach threatens the success of our industry, assaults self-government and underminds our efforts at realistically attaining self-sufficiency. In respect of these basic concepts, the decision as to how Bingo games are operated and managed must be a Tribal government process - not an asumption of Tribal government authority. Accordingly the Tribe urges that any legislation enacted by Congress provide that any bingo games owned by Tribal members and regulated by the Tribe be preserved.

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Prepared Statement of Raul Silvas
Vice Chairman of the Pascua Yaqui Tribe
Before the U.S. Senate Select Committee on Indian Affairs
Hearings on S. 1303 and S. 555
"The Indian Gaming Regulatory Act"
June 18, 1987

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

My name is Raul Silvas. I live on the Pascua Yaqui Indian Reservation southwest of Tucson, Arizona. I am the Vice-Chairman of the Pascua Yaqui Tribe of Indians.

It is an honor for me to be here today to present testimony on behalf of the Pascua Yaqui Tribe on S. 1303, a bill introduced by our home state Senator, Senator John McCain, and on S. 555, a bill introduced by the distinguished Chairman of this Committee, Senator Daniel Inouye. Both of these bills would establish federal standards and regulations for the conduct of gaming activities on Indian reservations and lands. Also joining me here today is Ms. Anne L. Howard, Washington Representative for the Pascua Yaqui Tribe.

Mr. Chairman, on behalf of all members of the Pascua Yaqui Tribe, I would like to thank you and Senator McCain for your leadership in introducing this most important legislation. During the last several months, our Chairman has served as a member of The National Indian Gaming Association (NIGA) and previously, served as a member of The National Task Force on Gaming on Indian Reservations. As you know, the NIGA has reviewed this legislation and earlier versions of this bill which address many of the concerns raised about Indian gaming businesses, and, at the same time, seeks to protect Indian gaming operations which have become a significant source of governmental revenues to many tribes throughout our country.

The Pascua Yaqui Tribe strongly supports Senator McCain's legislation which was co-sponsored by Chairman Inouye and Senator Evans. This bill is identical to the one introduced by our own Congressman from Tucson, Congressman Morris Udall (RH 2507). The Pascua Yaqui Tribe generally supports the NIGA's position on these bills as presented by Chairman Billy Houle today, with a few exceptions which I will outline in my testimony today. Specifically, I wish to recommend a few minor amendments to Senator McCain's bill which we believe will strengthen this legislation.

We strongly urge you to enact S. 1303 during this session of Congress. We believe this legislation is absolutely essential if Indian gaming operations are to succeed as legitimate and viable tribal businesses. If your legislation is not passed, tribal gaming operations will continue to be subject to court challenges, even with the recent Cabazon decision, and state interference will continue, raising questions about the legitimacy of tribal gaming activities, limiting the success of many tribal bingo operations which have become much-too-much dependent on outside, high-risk investment capital to survive.

The Pascua Yaqui Tribe strongly believes that your legislation, with some minor modifications, along with your Committee's oversight of the new National Indian Gaming Commission and its regulations designed to protect Indian bingo, can contribute greatly to the future success and security of Indian gaming business operations. The current lack of any federal legislative standards to protect Indian gaming, particularly bingo operations, has resulted in repeated challenges to tribal sovereignty, and has, time and again, left many tribes, particularly the Pascua Yaqui Tribe, at the mercy of unethical management contractors and numerous lawsuits. Because Indian bingo is perceived as a high risk business, very few, if any, banks or conservative investors are willing to risk their capital in a business that could conceivably be closed down tomorrow by the courts or by the Congress, Cabazon not withstanding. The Pascua Yaqui Tribe strongly supports the stringent requirements and high standards for management contractors and management contracts as set forth in the proposed legislation. We will offer two amendments to this section of the bill to further protect Tribal gaming enterprises.

History of Pascua Yaqui Tribe Bingo Business--YAQUI BINGO-- and Experience with Non-Indian Management Companies
1982-1987

Overview:

The Pascua Yaqui Tribe decided to go into the bingo business in December of 1982 in order to generate additional revenues to address the many social, economic and educational needs of our people. In 1982, the unemployment rate on our reservation was seventy percent (70%). Out of a potential labor force of three hundred and seven (307) members of sixteen (16) years of age and older, one hundred and fifty-seven (157) members of our Tribe were unemployed, and of the one hundred and fifty (150) members who were employed, one hundred and five (105) earn less than $7,000.00 a year.

At the present time, approximately one thousand sixteen (1,016) members of our Tribe now live on our reservation in Tucson. As you know, the majority of the five thousand seven hundred (5,700) enrolled members of the Pascua Yaqui Tribe live in other communities scattered throughout central Arizona, in Tucson (approximately two thousand three hundred [2,300] members), in Guadalupe near Tempe, in Marana, and in Scottsdale, where they work the land for others, have no income security and are totally dependent upon federal assistance.

In 1982, the median family income of the Pascua Yaqui Tribe was $7,000.00. In 1985, our median family income dropped to $5,032.00, and eighty-five percent (85%) of our people now live below the poverty line. This low income is further supported by an unemployment rate of fifty-one percent (51%) on our reservation. Of the approximately one thousand (1,000) members who currently live on our reservation in Tucson, more than three hundred (300), or approximately one-third, are under the age of sixteen (16). By the end of this year, a majority of the Tucson area members of our Tribe will return to the reservation to live in some four hundred (400) new HUD homes which are scheduled for completion by the end of the year. With these new houses, there will be a three hundred percent (300%) increase in the reservation population by the end of the year. The population will triple from one thousand (1,000) members to three thousand (3,000) members and the health, educational, and other needs of our people will increase accordingly.

All members of the Pascua Yaqui Tribe, those who are fortunate enough to live within our reservation, as well as those outside, are eager to work hard to contribute to our Tribal economy and do not want to be dependent upon federal funding alone. For this reason, our Tribe decided to establish a bingo business in 1982 with the hope that badly-needed revenues could be generated to help us address the many needs of our community and, at the same time, help us to reduce our dependency on shrinking federal dollars.

During the last two fiscal years, FY1986 and FY1987, the Pascua Yaqui Tribe has continued to experience across-the-board cuts in federal funding. The Bureau of Indian Affairs will continue to reduce its overall contributions in FY1988 (which begins October 1, 1987) by more than $100,000.00, that is, from $630,200.00 in FY1987 to $533,600.00 in FY1988. These reduced funds are for basic tribal social services, for tribal courts, fire protection, for employment, and for training.

The Indian Health Service advised us in January 1987 that there would be no funds for at least ten years in support of a badly-needed health care clinic on our reservation. Furthermore, I might add that even with the assistance of our Congressional Delegation, The Economic Development Administration (EDA) at The U.S. Department of Commerce has refused to invite our Tribe to submit a full application for a reservation-based Health Clinic which would serve the three hundred percent (300%) increase we will experience in our population by the end of 1987. EDA denied our request due to cutbacks in EDA's budget and competition among otherwise equally meritorious projects, not because our project did not meet all the general policy and specific program requirements. In fact, the pre-application for our project was an outstanding example of what Congress intended when it authorized projects to be funded under the "Public Works Impact Program (PWIP)" of the EDA.

Since The Indian Health Service will not have any funds to construct a health clinic on our reservation for ten years, our only hope is that the EDA and HUD--the only other federal agencies which fund construction of health clinics--will reconsider our request next year. I should also mention that since there will be a two percent (2%) cutback in IHS "reserve funds" in FY1988, our Tribe will not have sufficient funds to meet the health care needs of the 300% increase in our population by the end of the year. Furthermore, since Indian Tribes are not eligible for Head-Start "Expansion Money" our head-start program will not be able to accommodate the additional increase of some sixty-five (65) children at the end of this year.

Pascua Yaqui Bingo Management Companies

On December 1, 1982, the Tribal Council of the Pascua Yaqui Tribe adopted a bingo ordinance, licensing and authorizing the establishment of a bingo business on our reservation under certain conditions. On December 22, 1982, we signed a contract and a management lease agreement with our first outside management company, The Pan-American Management Company (PAMCO) of Tampa, Florida, to assist our Tribe in the financing, management, and maintenance of the bingo operation.

Beginning with the Pan-American Management Company, our Tribe has had nothing but a series of problems with each successive management company. In total, we have had five management companies or contractors, beginning with PAMCO.

I will briefly describe our experiences with each successive management company. I will then draw certain conclusions, based on the similarity of problems we have experienced with each management company and how these problems can be addressed by your legislation. As stated in the beginning of my testimony, I will make several recommendations in the form of proposed amendments to your legislation based on the experiences our Tribe has had in working with five different bingo or gaming management companies. Although the most recent problems with our current management company are not resolved, they are, in fact, indicative of the continuing problems which will arise without some federal standards and regulations for monitoring and enforcing laws that pertain to tribal gaming operations. I will summarize in somewhat greater detail our first experience with PAMCO (Pan-American Management Company), as all future contract and manatement lease agreements were amended to improve upon our agreements with PAMCO.

The five management companies retained by our Tribe and the approximate time frames within which each company managed and operated the Pascua Yaqui Bingo Hall are listed below. I should also mention that during more than one period since 1982, the Pascua Yaqui had to intervene personally to manage the bingo operation in order to keep the doors open; during other periods, we have had to close the Bingo Hall down.

	Name of Management Company or Status of Pascua Yaqui Bingo Hall Operation	Date
(1)	Pan-American Management Company	December 22, 1982 - December 31, 1983
(2)	VAL-DEL Company of Knoxville, Tennessee	January 1, 1984 - May 13, 1984
(3)	Pascua Yaqui Tribal Management of Bingo Operation (Outside investor lent Tribe $50,000.00 to re-open Bingo Hall on June 13, 1984)	June 1984 - November 1984
(4)	Mr. Norman Westin, a British bingo manager and investor	November 1984 - November 1984
(5)	Pascua Yaqui Bingo Hall closed	November 1984 - August 1985
(6)	K.T.I. Corporation, represented by Ann Chalk and Barry Bobbitt	August 1985 - October 28, 1985
(7)	Yaqui Bingo, Ltd., President, Alan Chafetz who is also President of TOMOL Holdings, Ltd., Calgary, Alberta, Canada	January 1986 - present

THE PAN-AMERICAN MANAGEMENT COMPANY: December 1982-December 1983

On January 22, 1983, one month after the signing of our contract with PAMCO, the Pascua Pueblo Bingo Hall, a one million dollar ($1,000,000.) new bingo facility and parking area on our reservation, opened for business. Our management lease with PAMCO provided that the Pascua Yaqui Tribe would be the sole owner of the business, including the newly-constructed facility. We agreed to retain and engage the services of PAMCO for a period of eight (8) years. We also agreed to pay PAMCO a management fee equal to forty percent (40%) of the net operating profits for each fiscal year, resulting from the bingo business. It was also agreed that one hundred percent (100%) of the net operating profits would be applied to pay the principal and/or interest on any indebtedness resulting from the cost of constructing, furnishing and equipping the Bingo Hall.

Our lease agreement outlined specific duties of the contractor in conformance with our Tribal Bingo Ordinance which included, for example, on-the-job training for new employees, preference for hiring Pascua Yaqui tribal members, management training for tribal members, preparation of monthly financial statements to be submitted to the Tribe and grounds for termination and arbitration rights.

Of the one hundred and fifty (150) jobs immediately created at Pascua Pueblo Bingo Hall, one hundred and twenty (120) went to qualified tribal members, and, as a result, in 1983, our unemployment rate dropped to forty-six percent (46%). Our total payroll in 1983 at Pascua Pueblo Bingo was $770,000. However, all management positions at the Bingo Hall were held by non-Indian, PAMCO employees. After the first few months of operation, we began to have serious problems with PAMCO's management. Tribal employees complained that they were being treated unfairly -- if a tribal member was late to work, he would be fired rather than being put on probation or even being counselled on personnel requirements and responsibilities. No management training program was established for tribal members. PAMCO also failed to submit financial reports to our Tribe on time. No member of the Tribe had access to the financial books or to the money room where questions began to arise over the profitability of the operation.

During the first eight (8) months of the operation, our Tribe received no income from Pascua Pueblo Bingo. We were told that the business required five hundred (500) players an evening to "break even," and attendance had consistently been below the "break even point." Pascua Pueblo Bingo then seated thirteen hundred (1300) players and was open seven (7) days a week. Our admission price was relatively low ($18 single/

$30 double), and our prizes were high in order to attract and maintain our new customers. The Tucson market also provided a solid population base to support our business, yet we were told that our business was suffering, because the Tucson market was not sufficient. The success of the newly-opened Papago Bingo operation outside of Tucson in 1984 and other successful bingo operations in Arizona and other states as well during the past year certainly contradicts PAMCO's explanation to us at that time.

Based on the success of other PAMCO bingo operations, principally in Florida with the Seminole Tribe and in Minnesota with the Shakopee Mdewakaton Sioux Community, we knew that something was wrong. In October of 1983, our Tribal Council members met with the senior management of PAMCO. We demanded that PAMCO live up to its contractual responsibilities and respond to tribal concerns over the financial situation as well as the continuing personnel problems of tribal members employed at the Bingo Hall, or we would terminate the contract.

PAMCO then filed suit in the Federal District Court of Tucson, claiming tribal interference in the management of Pascua Pueblo Bingo was a violation of our contract and that the Pascua Yaqui Tribe did not have the right to ask management to leave the reservation, thus terminating our contract. The Federal District Court Judge ruled that the court did not have jurisdiction over the matter and requested that The Bureau of Indian Affairs (B.I.A.) bring both parties together to resolve the issues. After examining our contract, the B.I.A. advised PAMCO that they were in violation of our management agreement. PAMCO then agreed to sell out its share of the business but demanded that our Tribe agree to their offer within two weeks -- by December 31, 1983 -- so that PAMCO could declare a business loss.

VAL-DEL COMPANY OF KNOXVILLE, TENNESSEE: January 1, 1984 - May 13, 1984

In January 1984, our Tribe was able to hire another bingo management company -- the VAL-DEL Company, based out of Knoxville, Tennessee -- which had expressed an interest in managing Pascua Pueblo Bingo for some time. VAL-DEL agreed to pay PAMCO $550,000 which was part of the remaining amount of indebtedness on the cost of constructing the bingo facility. One of the reasons that PAMCO offered for the lack of any previous tribal bingo profit was the necessity of using one hundred percent (100%) of all net operating profits to pay down our construction loan. One year after operation, therefore, we were still in debt over $900,000. PAMCO would have had us believe that in a year of operation, they had only made a little over $40,000 in profits. We, therefore, had no recourse but to hire another management firm that was willing to put up the investment capital necessary to assume our tremendous debt.

On January 1, 1984, we signed a new management agreement with VAL-DEL Inc. which provided for the Pascua Yaqui Tribe to receive $5,000.00 per month in bingo profits or twenty percent (20%), whichever was greater, and the remaining eighty percent (80%) of net operating profits would be used to pay down our $550,000 note on the building. The terms of the agreement were for a period of seven (7) years with the same sixty percent (60%)/forty percent (40%) split in net operating profits. VAL-DEL also agreed to increase the number of Yaqui members in key management positions immediately; that audits of the operation would be undertaken by an outside firm, with monthly reports submitted to the Tribe; and that a designated tribal official could have access to the money room.

Unfortunately, our problems started all over again. The bingo manager appointed by VAL-DEL was inexperienced in Indian Bingo and did not keep the company nor its investors apprised of our concerns as they arose. Our tribal members were not placed in key management positions, and employee and personnel problems continued. Although our community manager, Mr. Valencia, had access to the money room and to the financial statements, according to our agreement, we did not receive our first audit report for three months. The business was still not making any money, and we were employing fewer people. In 1984, our unemployment rate rose to fifty-eight percent (58%), and our total payroll dropped to $160,000 in the first quarter of 1984, an annual rate of $640,000 less than our 1983 annual high of $770,000.

In April of 1984, Mr. Valencia met with the VAL-DEL investors in New York and later in Arizona with members of our Tribal Council to review our complaints. The investors contended that they had not been informed of any problems. We attempted to negotiate a solution, but VAL-DEL would not agree, so we terminated our agreement. Following our agreement with the VAL-DEL investors, we learned that all money in the safe at the Bingo Hall had been removed, and that the preceeding week, VAL-DEL had closed all bank accounts. When payroll checks were issued the next week, they all, of course, bounced. We had to close the Bingo Hall on May 13. VAL-DEL left the Tribe with over $150,000 of outstanding bills.

PASCUA YAQUI TRIBAL MANAGEMENT OF THE YAQUI BINGO OPERATION: June 1984 - November 1984

In June of 1984, we were able to find a new investor who agreed to lend the Tribe $50,000 to reopen the Bingo Hall. It was agreed that the new investor would receive monthly financial reports from us but would not be involved in any management or administrative details of the Yaqui Bingo operation. Tribal members managed the business and held all key management positions except for two non-Yaqui tribal employees who filled the positions of Finance and Public Relations Directors. The Bingo Hall was re-opened on June 13 with ninety (90) employees. During the period of the tribe's management of the operation, the Papago Indian Tribe opened its new bingo hall which was located in the highly desireable position adjacent to the Tucson International Airport. Competition was stiff. Our Tribe was not able to pay salaries to Yaqui Bingo employees, nor were we able to cover expenses. As a consequence, we incurred over $300,000 in additional debt.

MR. NORMAN WESTON: BRITISH BINGO MANAGER/INVESTOR: November 1984 - November 1984

In November 1984, the Pascua Yaqui Tribe was approached by a British Bingo manager/investor by the name of Norman Weston. Mr. Weston proposed a joint venture agreement with the Tribe that was based on an "English style" bingo which would be played for a minimum of three (3) days per week. A member of our Tribe who monitored these games told me it was a ninety (90) number game which is much different from the normal or typical bingo game in the United States. However it differed, the public in Tucson did not like it. The night that the "All English Style" Bingo was held, no one came. In order to run his special, British style bingo games, Mr. Weston had to install new equipment in the Yaqui Bingo Hall.

Some of the original equipment was removed. In a very short period of time, Norman Weston decided to leave the Pascua Yaqui reservation. However, we demanded that, prior to his departure, he restore the Bingo Hall to its original condition. Since Mr. Weston did not intially want to comply, the Tribe stated that it would hold his equipment as collateral until such time as he deposited sufficient funds in an escrow bank account to cover the restoration costs. Both our Tribe and Mr. Weston had dual signing authorities. Approximately $14,000 was put in an escrow checking account to cover the costs of the renovation for the Bingo Hall. However, soon after Mr. Weston had left, our Tribe went to the bank to withdraw the funds for renovation, only to be told that Mr. Weston had a few days previously withdrawn all of the money. In addition, during the short period of Mr. Weston's operation of the Bingo Hall, he incurred numerous debts from vendors and other service providers in the local community.

Our Tribe sued the bank and has also sued Norman Weston and his partner in Nevada, Slim Ewing. A suit is currently pending.

The Bingo Hall was closed in November 1984 and did not re-open for almost a year, until August 1985. During this period, our Tribal Enterprise Commission interviewed more than fourteen (14) potential investment groups. The K.T.I. Corporation was chosen.

K.T.I. CORPORATION: August 1985 - October 28, 1985

The K.T.I. Corporation was represented by Ms. Ann Chalk, a Native American, and her partner, Mr. Barry Bobbitt, who would be the financial investor for the Yaqui Bingo operation. Both individuals initially gave a very good impression to tribal officials. Mr. Bobbitt established his reputation and credibility through his family who were financially and legally well-known in Washington state. After much discussion and negotiation, our Tribe felt comfortable about entering into a contract with Bobbitt and Chalk, as long as they would pay the Tribe a $200,000 down payment that was required for the Tribe to pay back wages and the outstanding debt to all vendors.

Sam Hilliard, the B.I.A. Area Director for the Pascua Yaqui Tribe and the Fort McDowell area, was present for the signing of the management agreement and lease between K.T.I. and the Pascua Yaqui Tribe. In addition, it should be noted that the B.I.A. arranged for all appropriate background checks to be conducted at the Tribe's request for both Mr. Bobbitt and Ms. Chalk. Since we were eager for our bingo business to get started once again, we authorized Mr. Bobbitt and Ms. Chalk to open the doors of the Yaqui Bingo Hall once again. Following the signing of our management agreement and lease, Barry Bobbitt stated that he had to go to Washington to secure the $200,000 down payment, but he never came back with the money. Instead, he returned to the Yaqui reservation with a highly convincing excuse that there would be a delay in the transfer of funds. The Tribe then put Mr. Bobbitt on a legal default notice of sixty (60) days. Although the Bingo business operated for about two months, no money was generated, and the Tribe was again left with a substantial debt. In addition, we fell prey to two individuals who can surely be called professional con artists. These were not ordinary people. Mr. Bobbitt constantly bragged about his mercenary activities, and he argued publicly a great deal with Ms. Chalk. On one occasion, he even used his rifle to pursue her, and Ms. Chalk had to call the Pima County sheriff to escort her to safety.

On August 28, 1985, the Pascua Yaqui Tribal Enterprise Commission served the K.T.I. Corporation with a Notice of Default, and sixty (60) days later, on October 28, 1985, the Bingo Hall was closed. K.T.I. Corporation left our Tribe with a further damaged credit rating with local vendors and still owes at least one hundred thousand dollars. K.T.I. filed for bankruptcy in early 1987.

At the current time, K.T.I. representatives, Ms. Chalk and Mr. Bobbitt, are involved in a lawsuit in Tucson. The appeal period granted by the lease with K.T.I. and the other lawsuits pending with previous operators, such as Mr. Weston, continue to complicate our Tribe's ability to enter into new agreements with other management companies, as will be evidenced in a description of our current situation with the Yaqui Bingo, Ltd. Corporation, run by a Canadian investment group.

YAQUI BINGO, LTD.: January 1986 to Present

Beginning in November 1985, the Pascua Yaqui Tribal Enterprise Commission (T.E.C.) began their search for other bingo management groups. The T.E.C. interviewed three major companies: CAHK, Inc., based out of Florida; TOMOL, Ltd., based out of Alberta, Canada; and Best Bingo, Ltd., an east coast management group represented by a Mr. Larry Parr.

The Canadian group, TOMOL, was represented by Casinos Austria. Mr. Jack Lansdale, the Pascua Yaqui Tribal attorney, introduced representatives of Casinos Austria, Mr. Ray Carter and Dr. Irwin Haitzman, Managing Director, to Pascua Yaqui Tribal Manager, Anselmo Valencia, and Mr. Roperto Mendez, Yaqui Tribal Enterprise Commissioner, in November 1985. (I have included a copy of the Casinos Austria annual report and promotional brochure in the attachments to my testimony for the consideration of the Committee.)

The managing director of Casinos Austria, Dr. Haitzman, told the Yaqui Enterprise Commissioners that Casino Austria wanted to move to the United States and was very interested in economic development projects with the Pascua Yaqui Tribe. Dr. Haitzman and Mr. Carter further stated that Casinos Austria intended to buy a large tract of land between Tucson and Phoenix to develop a large project called "Sportsworld" which would host major league baseball, football, tennis and other competitive sports and establish an "adult Disneyland" for Tucson/Phoenix area residents. In exchange for a gaming facility they planned to erect at "Sportsworld" on "Trustland" which they would buy and donate to the Tribe, they offered the Tribe a percentage of the new development. They stated that they wanted to have a very large bingo facility and possibly a casino, if Arizona law would permit. They assured us that they would take care of all the legislation and any legal issues involved, and basically, they promised us that everyone involved would get rich. To further substantiate their promises and commitments, detailed diagrams of the projected Sportsworld complex and other documents were shown to the Tribal Enterprise Commissioners. The managing director of Casinos Austria then stated that he was aware that we were looking for a new bingo operator, and they wanted to highly recommend an operator based out of Canada, the TOMOL Corporation, headed by Mr. Alvin Chafetz. We were told that the TOMOL Corporation was very experienced in bingo, that they had managed several successful operations in Canada. In addition, we were later apprised that TOMOL Corporation specialized in the construction and design of condominium business parks and perceived itself to be a leader in progressive real estate development with substantial holdings throughout western North America, from Calgary to Dallas, from Phoenix to Spokane.

By December 1985, the Tribal Enterprise Commission had received formal bids from three different investments groups to operate the Bingo Hall. The basic agreement for each investment group provided a minimum compensation and reimbursement provision for the Tribe of some $265,000. Of this amount, $200,000 was to be paid upon the signing of the agreement, and the remaining $65,000 would be paid to the Tribe on or before April 30, 1986. These funds would be used to pay the back expenses incurred by the Tribe's previous operation of the Bingo Hall (including expenses for employees' salaries, vendors, suppliers and a tribal loan). The agreement also provided for a minimum compensation fee to the Tribe of $20,000 per month to be paid in advance. Of this amount, $15,000 represented a fixed monthly lease payment, and $5,000 represented a minimum fee for the Tribe's projected monthly share of bingo revenues. These funds were used to supplement reduced federal funding for health, education and employment programs, as exhibited in the

1986-1987 Pascua Yaqui Financial Statement.

In December 1985, the Tribal Enterprise Commission presented the three offers that they had received to the Tribal Council. The Tribal Council chose to do business with the TOMOL, Inc. group from Canada whose representatives were Mr. Alvin Chafetz, President, and Mr. Byron Jacobson, Operating Manager. The TOMOL, Inc. group made a very attractive offer, as reflected in a detailed Letter of Intent dated December 7, 1985 to Tribal Chairman, Mr. David Ramirez. (I have included this Letter of Intent for "Yaqui Bingo, Ltd." in the attachments for the Committee's consideration.)

The proposed terms of the agreement provided for a term of five (5) years to commence once the Bureau of Indian Affairs (B.I.A.) approved of the agreement and contained other very positive features, including an agreement that seventy-five percent (75%) of the operational management positions would be held by Yaqui tribal members at the end of the fifth year. Proper and standard accounting procedures assuring that sufficient funds would be on hand for payments of the prize schedules and for timely payment of all operating expenses and employee salaries were also contained in this agreement. To give the Tribe the assurance of financial collateral we desired, the agreement required that an irrevocable Letter of Credit in the amount of $200,000 be placed on deposit with the Valley National Bank in Tucson, Arizona for the entire term of the agreement and lease, including any renewals.

The minimum monthly fee of twenty thousand dollars ($20,000) constituted a guarantee against a payment formula which was based upon a "per capita" attendance at the Bingo Hall. The payment formula provided that the Tribe would receive $2.00 per person attending each night's bingo session, up to five hundred persons. An average nightly attendance would be established to be used as the basis for determining whether there would be any future adjustment of the "per capita" attendance payment for each applicable month. For example, if the average nightly attendance were five hundred (500) persons or less, the Tribe would be paid a sum of $2.00 for each person attending the bingo during that current month. If the average nightly attendance were greater than five hundred (500) but less than six hundred (600), the Tribe would receive $2.25 for each person. The agreement, therefore, provided an escalator clause, so that after the first five hundred (500) people, payments would increase at one quarter increments to a maximum of $3.00 per person for eight hundred (800) people or more attending bingo during a current month.

This particular payment system, where the Tribe received a per head fee off the gross take of the Bingo Hall, assured that the Tribe would benefit from the bingo proceeds. Previous arrangements based on a percentage of net operating profits never resulted in the Tribe's receiving its just share or percentage of bingo revenues. Based on the per head system, the Tribe would average approximately $50,000 a month, although this amount was not paid at all times, as I will describe further in my statement. In addition, projections showed that, based on these per head calculations, well over sixty to eighty percent (60% to 80%) of the projected net operating profit would go to the Tribe if all other things were equal. However, as I have just stated, the reason the Tribe did not negotiate an agreement based upon a percentage of the net operating profit is that in all of its four prior management agreeements, the Pascua Yaqui Tribe never received the agreed upon amount or percentage of the "net operating profits," because we were told there was never a net profit or sufficient profits to pay the Tribe's share.

During the first week of January 1986, the Tribal Council signed the Letter of Intent and a lease for the operation and management of the Bingo Hall with the TOMOL, Inc. group. The Bureau of Indian Affairs' Area Representative and Director had previously reviewed the proposed agreement in December 1985 and advised us that they saw no problems and offered only a few minor, technical changes. We discussed with the B.I.A. whether or not the hall should be open during the appeal period still pending with the

K.T.I. Corporation suit. It was agreed that the Bingo Hall should be opened, that back wages due to Yaqui employees be paid and that the Yaqui Bingo, Ltd. would commence management and operation of the Hall under the December 7, 1985 Letter of Intent submitted by Mr. Chafetz.

The pending lawsuit and drawn out appeal process of the K.T.I. Corporation prevented the B.I.A. from immediately ratifying the Yaqui Bingo, Ltd. Letter of Intent. Under CFR25, the Code of Federal Regulations which governs lease agreements with Indian tribes, there were two separate appeal periods that K.T.I. could utilize in appealing its lease agreement with the Tribe. After considerable time had passed and the appeal process was complete, the B.I.A. caused the Tribe a further delay in ratifying the Tribe's Letter of Agreement. Once the B.I.A. denied the K.T.I. representative's request for an appeal, the B.I.A. authorized another thirty day period on the second appeal. As a result, the current agreement with Yaqui Bingo, Ltd. could not be ratified until K.T.I.'s appeal process had fully expired. Once the appeal process expired, the B.I.A., in April 1986, contacted the Tribal Enterprise Commission and said the agency was in a position to ratify the agreement, so long as Yaqui Bingo, Ltd. was in compliance with the terms of the agreement. As set forth below, Yaqui Bingo, Ltd. was in gross violation of the agreement, and therefore, the

B.I.A. could not ratify the agreement.

BACKGROUND: YAQUI BINGO, LTD. VIOLATIONS OF MANAGEMENT AND LEASE AGREEMENTS

Almost as soon as Yaqui Bingo, Ltd. commenced business, our problems began all over again. The president and manager of Yaqui Bingo, Ltd., Mr. Alvin Chafetz and Mr. Byron Jacobson, (hereinafter referred to as "Yaqui Bingo, Ltd. representatives or officials") evidenced a consistent pattern of gross violations again the signed Letter of Agreement (Letter of Intent and Lease Agreement) which was submitted to the Chairman of the Pascua Yaqui Tribe by Mr. Alvin Chafetz on December 7, 1985.

In January 1986, Byron Jacobson told the Yaqui Tribal Enterprise Commission that Ray Carter, the former representative of Casinos Austria, had been involved in criminal activities in Austria, and Casinos Austria had therefore withdrawn all prior commitments and promises to the Tribe for the additional land and the joint venture proposed involving the "Sportsworld" project, among others. In January, our Tribe submitted its third request for background information on investors in the Yaqui Bingo, Ltd. Corporation. As we have recently discovered, full disclosure was never made to the Tribe. The Yaqui Bingo, Ltd. also requested a ninety day extension to provide the $200,000 Letter of Credit required by the Letter of Agreement. As early as February 1986, the Yaqui Bingo, Ltd. commenced the practice of issuing bad checks, a situation which has persisted to date. On February 13, the manager delivered a check in the amount of twelve thousand, seven hundred and fifty-eight dollars ($12,758.00) to the Tribe. This was the remainder of the first month's payment to the Tribe, but the check was returned for insufficient funds on the Friday that it was deposited.

On the second page of our Letter of Agreement, the right of the bingo manager to engage in casino-related gaming activities without the written consent of the owner is specifically prohibited. However, the Yaqui Bingo, Ltd. proceeded to install poker machines in the Bingo Hall, and on February 25, 1986, the Tribal Enterprise Commission formally put the management company on notice that only bingo-related videos were allowed in the hall under law.

In March, the management company continued its practice of bouncing checks for both the Tribe and its employees. On March 4, the remainder of the Tribe's January payment, twelve thousand, seven hundred and fifty-eight dollars ($12,758.00) and a twenty thousand dollar ($20,000) payment bounced twice. Appropriate memoranda were sent to the management company by the Tribal Enterprise Commission, stating that bad checks were illegal and were causing extremely serious problems, that numerous suppliers in the Tucson area were complaining of late payments and bad checks, and that the management company's poor credit reputation was reflecting negatively upon the Yaqui Indian Tribe.

In the third month of operation, Yaqui Bingo, Ltd. began to have employee problems. Under our agreement, the management company was required to submit a personnel policy to the Tribe which provided for due process when terminating an employee. Much to our dismay, the management company did not implement any of the standard personnel policies outlined in our agreement. In fact, Yaqui Bingo, Ltd. failed to implement policies that had been used by prior management companies in accord with the Tribal Bingo Ordinance and each particular management agreement.

In April 1986, the Bureau of Indian Affairs submitted a letter to Yaqui Bingo, Ltd. setting forth the numerous non-compliance areas of the agreement, and asked for verification that all problems had been addressed before the B.I.A. could ratify the agreement. The Bureau of Indian Affairs noted seven (7) major breaches of our agreement, all of which are contained in the attachments on the "Yaqui Bingo Performance History," (December 1985 to May 1987). I call your attention to page eleven (11) of that document, which summarizes the B.I.A. letter. The B.I.A. stated that the management company had failed to:

- provide a workman's compensation binder and employee insurance documentation;
- provide documentary evidence that all employees who had no money were bonded;
- provide proof that the $200,000 Letter of Credit

had been placed in the Valley National Bank;

- provide proof that the remaining $65,000 had been paid on our down payment agreement;
- cover all of the bad checks that they had written and certify in writing that this illegal practice would not continue;
- comply with the disclosure agreement to inform the Tribe of sub-contracting for $1,000,000 events, etc.;
- provide proof that the building and public liability insurance were in effect.

At the end of April, the president and manager of Yaqui Bingo, Ltd. met with officers of the Tribal Enterprise Commission and claimed that they could not meet their back payments. They swore that an additional two hundred fifty thousand dollars ($250,000) had been invested in Yaqui Bingo, Ltd., enabling them to bring back payments due to the Tribe in the near future. They offered payment schedules, but payments were not made. I should note that it took one year, that is until April of 1987, for the management company to even insure the Bingo Hall.

The saga of our Tribe's relationship with this management company continues. I will simply add that at the end of April 1986, as if the Tribal Enterprise Commission had not already received every excuse in the book, the officers of Yaqui Bingo, Ltd. asserted that they could not make their final down payment, because oil prices had fallen in Canada, and they had been put in additional financial distress. Requests for further extension privileges were made, and, month by month, the situation continued.

In November of 1986, the Bureau of Indian Affairs informed the Yaqui Tribal Enterprise Commission that they were now in a position to ratify the Lease and Letter of Agreement between the Tribe and Yaqui Bingo, Ltd., since the time for the K.T.I. Corporation's appeal had expired. Mr. Sam Hilliard, the local B.I.A. representative, asked if Yaqui Bingo, Ltd. was in compliance with the agreement and if they had complied with the points outlined in his breach of contract letter of April 1986. On November 21, 1986, the Tribal Enterprise Commission submitted a formal letter to Yaqui Bingo, Ltd. signed by Chairman Ramirez, asking that the management company certify their compliance with the Letter of Intent and Agreement of December 7, 1985 so that the contract could be ratified, along with appropriate addendums, by the B.I.A. To this date, no response has been received from Yaqui Bingo, Ltd. Therefore, the B.I.A. never ratified the lease nor the agreement of this management company. I should note that the Tribal Enterprise Commission made repeated requests to the management company for evidence of their compliance with our agreement so that the contract could be ratified.

In late November 1986, it became increasingly clear that further breaches of contract could be anticipated.

The management company was opening the Bingo Hall with insufficient funds to meet the payments of the prize schedule, let alone provide for payment of operating expenses, including employee wages, vendors and suppliers costs. The management company was hiring employees without disclosing personnel information to the Tribe, as required under our contract, and, outside lawsuits against Yaqui Bingo, Ltd. by various equipment vendors were beginning to surface.

On December 9, 1986, twenty-eight (28) customers and employees of Yaqui Bingo Hall filed a formal complaint against the management of Yaqui Bingo, Ltd. with the Tribal Enterprise Commission. Among their concerns were the following: bounced checks; unfair pay; unprofessional management as demonstrated by the lack of sufficient funds to cover payment for prize schedules each evening; forcing sales on customers when they were not interested; lack of uniforms for security personnel; poor sanitary conditions,; poor working conditions of the bingo equipment.

The management company advised the Tribal Enterprise Commission that they were unable to pay the rent or meet the per head payment to the Tribe, since attendance had dropped and former suppliers had removed video equipment due to the management company's negative credit rating. (Yaqui Bingo had written so many bad checks that the owner of the video machine company refused to do business with them.) In an attempt to collect some money from the bingo operation for the Tribe, Tribal Enterprise Commissioner Kathy Nordine met with the president of the management company and agreed to intervene on its behalf with the owner of the video machine company to propose that the video businessman participate in the profits of the video machines. The proposal guaranteed that the Tribe, on a daily basis, would make thirty percent (30%) of the net profits generated by the videos. On December 24, 1986, an agreement was reached (see attachments). Since that time, the only payments that the Tribe has received from Yaqui Bingo, Ltd., including payments due for the rent, for the per head share of the bingo revenues, interest payments and so forth, were the daily payments collected from the video receipts, amounting to approximately twenty thousand dollars ($20,000) per month. The average amount due to the Tribe was approximately forty-six thousand dollars ($46,000) per month.

In January 1987, the president of Yaqui Bingo, Ltd. met with the Tribal Enterprise Commission to again try to make amends on the, by now, continuous breaches of the Tribe's contract. The president of the management company stated that he would remove the manager of the Bingo Hall, thereby creating a new management team that would rectify the situation. I should note at this point that the manager of the Bingo Hall was not removed from his position until May 2, 1987.

Mr. Chairman, I now turn to the most recent situation with our management company, having demonstrated the company's clear and consistent pattern of violating our management and lease agreements.

I can only assume, Mr. Chairman, that you and other Members of the Committee are curious: why did the Tribal Enterprise Commission or the Tribe not sever our relationship with Yaqui Bingo, Ltd. sooner? One of the reasons is that, given our history with previous management companies -- companies that promised to pay but never came through on their word -- the initial payment received from the TOMOL group was a significant factor in the Tribal Enterprise Commission's constant attempts to negotiate a solution to the on-going problem. Specifically, since the Tribe had been given two hundred thousand dollars ($200,000) (and, even though this was less than one-half of the four hundred sixty-five thousand dollars ($465,000) payment due on the signing of the agreement), we were able to pay back wages to all the bingo employees (many who had not received any wages since June 1984) and also to pay off many outstanding bills, as well as support certain critical tribal programs. In fact, during 1986, the Tribe receive a total of approximately four hundred thousand dollars ($400,000) in bingo income (including the two hundred thousand dollars [$200,000] down payment) which was used, for example, to pay for tribal projects and programs such as: the Tribe's adobe brick block machine ($66,534.00); wages and fringe benefits for firemen, the Tribe's economic development planner, prosecuter and defender; wages (totalling $84,474); payments for three community van vehicles for the elderly (approximately $16,000), etc. (See attachment of May 15, 1987 on Yaqui Bingo Financial Statement.)

In addition, we did not terminate our contract with Yaqui Bingo, Ltd. sooner, because very few, if any management companies were interested in running our bingo business until the Supreme Court made its decision on the Cabazon case.

On March 27, 1987, the president of Yaqui Bingo, Ltd. met with the Tribal Enterprise Commission to review the numerous breaches of the bingo contract and to show the commissioners a copy of an installment agreement with the Internal Revenue Service, showing that he was paying $2,000 per week against the $140,194.39 debt he owed the I.R.S. for withholding taxes. A letter was also provided from the Arizona bank stating that no checks had been returned since January 14, 1987. It was decided at this meeting that the Tribe would submit to Mr. Chafetz in writing in the form of a Notice of Breach to be legally prepared by the tribal attorney, Mr. Jack Lansdale, a summary of all of the violations of the current agreement.

During the period that the breach of contract letter was being prepared by our tribal counsel, the president of

Yaqui Bingo, Ltd. approached the Tribe with yet another offer to pay off all the debt and continue the business by giving the Tribe thirty percent (30%) of the video net profits to pay the previous debts. Under this agreement, the president's figures showed that the Tribe would receive a minimum of fifty thousand dollars ($50,000) per month estimated income which was comparable to if not better than the current agreement. However, given the numerous problems and consistent pattern of violatons of the existing contract for more than a year, the Tribal Enterprise Commission decided the Tribe should demand a minimum monthly guarantee of fifty thousand dollars ($50,000). The Tribal Enterprise Commission advised the president of the Yaqui Bingo, Ltd. that they were prepared to take his offer to the Tribal Council if he would agree to the minimum monthly guarantee. Since the president of Yaqui Bingo, Ltd., Mr. Alvin Chafetz, said he could not agree to add such a guarantee, Commissioner Nordine stated that he would be therefore put on formal notice of breach of contract.

During April 1987, we additionally learned from our tribal attorney that two investors of Yaqui Bingo, Ltd. were also suing the company for alleged fraud, racketeering, and breach of contract, seeking more than eight hundred and forty thousand dollars ($840,000) in damages, as well as a court order dissolving ARIZONA BINGO which the investors said was illegally established. The two investors, Texas businessmen Michael A. and Martin B. Grossman, stated, according to a May 9th article in the Arizona Daily Star, that they invested two hundred and ten thousand dollars ($210,000) in the bingo management company in December 1985 and that Chafetz and his partner Jacobson misled them into expecting much higher profits than were actually generated.

On May 4, 1987, Tribal Chairman, Mr. David G. Ramirez, issued a ten (10) day breach of contract notice to Alvin Chafetz, President of Yaqui Bingo, Ltd. The breach of contract notice covers many of the points I raised earlier in my testimony, but in summary specifically addresses:

1. Employee-related matters. The management company did not abide by the personnel policies outlined in the agreement;
2. Security: The management company did not provide for adequate security. (i.e., they did not respond to numerous complaints regarding drug usage on the premises; security personnel refused to intervene in numerous instances affecting the personal safety of patrons; security personnel were not wearing uniforms or badges as required.
3. Accounting/Books of Account: Bingo prizes have been paid with post-dated checks, and winners have not been able to immediately collect on their winnings

as required under the contract. The two hundred thousand dollar ($200,000) Line of Credit was never supplied, and further, bad checks had been issued to vendors, employees, and maintenance personnel. The management company failed to provide the Tribe with personnel records, wage and salary information, and monthly financial statements.

4. Compensation/Reimbursement: Management contractor owed the Tribe two hundred and sixty five thousand dollars ($265,000) from the initial payment due upon signing of the contract.
5. Compensation: Management company was delinquent on rent due and in monthly bingo revenue payments to the Tribe in the amount of four hundred and one thousand, three hundred and twenty-five dollars and twenty-three cents ($401,325.23) through April 30, 1987.
6. Maintenance/Operation: Necessary roof and generator repairs have not been made.
7. Partners/Investors: Failure to disclose all investors, partners, officers, and/or directors as required under the agreement with the Tribe.
8. Insurance, Social Security, and Taxes: Management company failed to comply with applicable social security, workman's compensation and insurance for

occupational disease and other requirements of the contract.

9. Insurance: Management contractor had not complied with the requirements of insurance for public liability (Be it noted that not until March 27, 1987 did the management contractor provide a binder showing insurance of the premises.)

Mr. Chairman, on May 4, 1987, the day that the formal breach of contract notice was submitted to the president of Yaqui Bingo, Ltd., the situation at the Bingo Hall became very serious. The officers and employees of the management company were writing bad checks and bad gift certificates for the winners of the games, since there was not enough money to pay for the prizes. The Tribal Enterprise Commission contacted our tribal attorney to let him know of these events, and the attorney advised that the Bingo Hall should be closed immediately and, if the Tribe was aware of any criminal activities in the Bingo Hall (e.g., writing bad I.O.U.'s), it should be immediately reported to the B.I.A. police. The Tribal Enterprise Commission conveyed our attorney's recommendation to the management's officers at the Bingo Hall, and the recommendations were rejected. Commissioner Nordine then called the B.I.A. police and the tribal prosecutor to discuss the circumstances. Later, Commissioner Nordine, at a meeting with the Tribal Judge, was asked about the Tribe's action in serving Yaqui Bingo, Ltd. with the ten (10) day breach of contract notice.

Mr. Chairman, I have mentioned some of the additional circumstances that led up to and followed our Chairman's submittal of the ten (10) day breach of contract notice on May 4, as neither I nor several members of the Tribal Council were aware of the illegal and criminal activities that were going on in the Bingo Hall. Under our agreement with the management company, if there is a dispute between the management and the Tribe, the dispute is first to be brought to the Tribal Council to see if it can be resolved amicably prior to going to arbitration. It is further stated that the governing body adjudicating the arbitration shall be the tribal court and that the management company and the Tribe shall abide by the decision of the tribal court. Since several members of our Council were not fully aware of all the serious violations of our agreement during this protracted period of time, we challenged the authority of the Chairman and the Tribal Enterprise Commission in filing the breach of contract notice against Yaqui Bingo, Ltd. The Council contended that they should have been consulted before the notice was issued; however, given the emergency nature of the activities occurring at the Bingo Hall -- the "last straw nature" of what by now were daily violations of our contract -- the Tribal Enterprise Commission and the Chairman proceeded on their own to rectify the situation. Because the Council was not notified in advance of this matter, and since these issues were of serious concern to certain of our Council Members, our Chairman, Mr. David Ramirez, and our Community Manager, Mr. Valencia, were temporarily suspended, and members of the Tribal Enterprise Commission were unfortunately relieved of their duties on May 12, 1987. We are now working to resolve this situation as soon as possible. I am hopeful that it will be resolved in the coming week or two.

Let me now summarize the general problems our Tribe has experienced with management companies or contractors who have managed, operated, or invested in the Pascua Yaqui Bingo Hall from 1982-1987.

Based on the experiences of our Tribe with five different management companies during the period of December 1982 to the present, the following represent a few of the problems we have encountered with each management company. Some of these problems were rectified in each management agreement, only to be later violated. On the whole, however, the stringent standards and regulations for management contractors and investors as required under S.1303 (H.R. 2507), along with the proposed amendments to S.1303 (H.R.2507) that the Pascua Yaqui Tribe will submit in our testimony today, address the following problems:

1. General violations of tribal management contract and/or lease agreements including specific duties of the contractor to conform to requirements of the Tribal Bingo Ordinance. Failure to comply with provisions such as:
    - on-the-job training for new tribal employees;
    - preference for hiring Pascua Yaqui tribal members;
    - management training for tribal members;
    - preparation of monthly financial statements to be submitted to the Tribe;
    - establishment of overall personnel and employment

policy;

2. Full disclosure of financial investors in management companies, prior to, during and after signing tribal agreement or contract.
3. Receipt of monthly audit reports and tribal access to bingo money room and all financial agreements.
4. Adequate security personnel and enforcement of all pertinent laws and regulations concerning the handling and dispensing of monies.
5. Proper and standard accounting procedures to ensure that sufficient funds will be on hand for payment of prize schedules either through cash or certified funds and that sufficient funds for timely payment of all operating expenses, including but not limited to wages, vendors, and suppliers be made available.
6. Timely minimum compensation payments to Tribe based on bingo profits.
7. Timely approval of management contract or lease agreement and timely background checks, both criminal and financial, by the Bureau of Indian Affairs.
8. Full disclosure of all investors, including general and limited partners, and all corporate officers, directors and employees who have day-to-day management responsiblity for the gaming operation.
9. Employee-related matters: Implementation of personnel

policies and procedures outlined in the management agreement.

10. Accounting: Bingo prizes were paid with post-dated checks and winners were not able to immediately collect on their winnings as required under the contract. The management company failed to provide the Tribe with personnel records, wages and salary information, and monthly financial statements. Bad checks were illegally issued to numerous vendors and other service providers in the Tucson area, as well as employees and maintenance personnel.
11. Compensation/Reimbursement: Management company was delinquent on rent payments as well as monthly bingo revenue payments to the Tribe.
12. Failure to comply with insurance requirements pursuant to the management agreement.

Let me now turn to my specific recommendations for amendments to your legislation.

RECOMMENDATONS: PROPOSED AMENDMENTS TO S.1303/H.R.2507

1. NATIONAL INDIAN GAMING COMMISSION:

Mr. Chairman, our first proposed amendment to S.1303/H.R.2507 is to Section 5 of the Act which establishes within the Department of the Interior an independent commission to be known as the National Indian Gaming Commission. Chairman Ramirez and Mr. Valencia, our Tribal Community Manager, previously presented our recommended changes to this section of the bill to the National Indian Gaming Association and also to the Indian Affairs Counsel for Indian Affairs of the House Interior Committee.

The Pascua Yaqui Tribe believes it is very important that the five members who will be appointed Commissioners represent appropriate geographic and regional balance. We are fully cognizant of this Committee's desire to keep the commission small, so we have not proposed an increase in membership; rather, we propose that tribal members be selected from each of four regions, the East and Southeast; the Midwest; the Northwest; and the Southwest. And, that language be included in the bill or in the committee report instructing the Secretary of the Interior to assure that members are selected from each of the four regions reflecting appropriate geographic and regional balance.

Technically, we recommend that Section 5(b)(1)(B) be deleted and that Section 5(b)(1)(C) be amended to read as follows:

"...four members who shall be enrolled members of federally recognized Indian tribes and who shall be appointed by the Secretary from the recommendations of tribes then engaged in or regulating gaming activities. Tribal members shall be selected from each of four regions: the East and Southeast; the Midwest; the Northeast; and the Southwest; and shall represent appropriate geographic and regional balance."

2. REQUIREMENTS FOR MANAGEMENT CONTRACTS/CONTRACTORS:

Under Section 13 of S.1303 and H.R.2507, subject to the approval of the Chairman of the new Gaming Commission, a "tribe may enter into a management contract for the operation and management of a Class II or Class III gaming activity, except that, before approving such contract, the Chairman shall require and obtain" pertinent background information to include "a complete financial statement of each person listed pursuant to paragraph (1)." (i.e., see Section 13(a)(3).)

The Pascua Yaqui Tribe proposes to further strengthen this Section of S.1303/H.R.2507 by requiring the Gaming

Commission to conduct appropriate background credit checks on all prospective management companies or contractors, similar to the standard credit checks undertaken by financial institutions to determine the "credit-worthiness" of a firm. Such credit checks would include an evaluation of information available through public sources such as Dunn & Bradstreet and TRW, as well as a more rigorous analysis conducted by expert staff of the background financial statements submitted by each contractor or management company.

In addition, since all gaming tribes have a valuable asset in their gaming enterprise(s), the Pascua Yaqui Tribe recommends that the Commission further protect tribes against the possibility of fraud or diversion of funds by management contractors or joint venture partners by requiring certain minimum financial guarantees, which could take the form of surety and/or payment bonds or a bank stand-by letter of credit. This type of financial guarantee is particularly important when a tribe does not have direct control over the management and day-to-day operations of a tribal gaming enterprise. In the case of a minimum financial guarantee, such as a surety or payment bond, or a letter of credit, the tribe would be designated by the management contractor as the beneficiary, and would thus have the right to draw on the letter of credit or bond if and when the management company were delinquent in its payments to the tribe, pursuant to the agreed-upon management contract. As the Committee knows, this type of financial arrangement is a standard operating procedure with many tenants who are required to post a bond or letter of credit in an escrow bank account.

The Pascua Yaqui Tribe has found out the hard way that the simple provision of requiring a financial statement of the person or entity having a financial interest in, or management responsibility for, a tribal gaming enterprise does not provide sufficient or necessarily accurate information on the short or long-term financial soundness (i.e. "credit-worthiness") of that individual or entity.

Specifically, we recommend that the following or similar language be added to S.1303/H.R.2507, Section 13(a)(3) and Section 13 (c):

Section 13(a)(3): " a complete financial statement of each person listed pursuant to paragraph (1);" and "any person listed pursuant to Subsection (a)(1) shall by subject to a standard financial background credit check by the Commission."

Section 13(c): "Any management contract entered into pursuant to this secion shall specifically provide -"

(7) "for a minimum financial guarantee to the Indian tribe in the form of a surety or payment bond or a bank stand-by letter of credit."

In addition, we propose an amendment to Section 13 Subsection (d) which provides that the Chairman of the

Gaming Commission "may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity if he determines that such percentage fee is reasonable in light of surrounding circumstances, but in no event shall such fee exceed forty percent (40%) of the net revenues."

In my prepared testimony, I stated that the Pascua Yaqui Tribe did not negotiate an agreement with our current management company based upon a percentage of the net operating profits, since our last four management agreements which were based on such an arrangement never allowed the Tribe to recoup its percentage share of the "net profits" as provided under each agreement. The plain fact is we were always told that there were never sufficient "net profits" to pay for the Tribe's share of the agreement after all prizes and expenses had been paid.

To deal with this situation, our current management agreement provides that the Tribe shall receive a per head fee for every person who walks in the door for the first five hundred (500) people. There is an escalator clause in our agreement to increase that per head amount at one quarter intervals for each additional one hundred (100) persons, up to a maximum of three dollars ($3.00) per person for eight hundred (800) people or more. In other words, the fee is two dollars ($2.00) per person for the first five hundred (500) people, two dollars and twenty-five cents ($2.25) for the next six hundred people, two dollars and fifty cents ($2.50) for the next seven hundred (700) people and so on up to the maximum of three dollars ($3.00) for eight hundred (800) people or more. In addition, this system was based on a six month averaging of attendance. This arrangement, where the Tribe receives a per head fee off the gross take of the Bingo Hall, assures that a tribe will benefit from the bingo proceeds. According to our calculations, our Tribe would average approximately fifty thousand dollars ($50,000) a month, although this amount was very rarely paid, as detailed in my statement. Projections also showed that, based on these per head calculations, well over sixty to eighty percent (60% to 80%) of the projected net would go to the Tribe, if all other things were equal.

Accordingly, the Pascua Yaqui Tribe would respectfully recommend the following amendment to Section 13, Subsection (d): "The Chairman may approve a management contract providing for a fee based upon the net revenues of a tribal gaming activity, or for a fee based upon the percentage of gross revenues, if he determines that such percentage fee is reasonable in light of surrounding circumstances but in no event shall the fee exceed forty percent (40%) of the net revenues."

3. COMMISSION LISTING OF MANAGEMENT COMPANIES/CONTRACTORS:

Mr. Chairman, the Pascua Yaqui Tribe recommends that the Committee include a provision in the legislation, or in the Committee Report to accompany the bill, that will provide for the Chairman of the National Indian Gaming Commission to assemble a list of management companies and contractors in the gaming or bingo management business who have been approved by the Gaming Commission according to the provisions of Section 13 of S.1303 and H.R.2507. Such companies or contractors would also comply with other provisions of the legislation which determine the suitability and fitness of a management contractor for Class II and Class III gaming. The list of gaming management companies would be available upon request to any tribe within the United States.

Mr. Chairman, I want to thank you again for the opportunity to testify before your Committee today in strong support of S.1303. The Pascua Yaqui Tribe commends you for your leadership and respectfully requests consideration of our recommendations. Thank you very much.

PREPARED STATEMENT OF ROGER A. JOURDAIN

Mr. Chairman, I am Roger A. Jourdain, Chairman of the Red Lake Band of Chippewa Indians. It is an honor and a privilege to testify before you, particularly considering your extraordinarily heavy congressional obligations. I appreciate your commitment to Indian tribes to act as our advocate and thank you for inviting me to testify on S. 555 and S. 1303, the proposed Indian gaming legislation.

INTRODUCTION

As you know, the Red Lake Band of Chippewa Indians opposes the adoption by Congress of S. 555, S. 1303 or any other legislation that would impose upon Indian tribes federal standards and regulations governing the conduct of gaming activities on Indian reservation lands. The Red Lake Band of Chippewa Indians has expressed its strongly-held views in the attached Resolutions No. 135-86 and No. 70-84. These resolutions not only oppose any expansion of federal involvement in gaming activities, but also request that if legislation is enacted over our objection, Congress include language specifically exempting the Red Lake Band of Chippewa Indians from its application.

The Red Lake Band of Chippewa Indians also supports the inclusion of a provision making the application of such legislation contingent upon the consent of each affected Indian tribe. Such a requirement was called for by public assembly vote at a meeting of Indian tribal representatives held in Las Vegas, Nevada on July 30-31, 1986. The meeting was called by the National Indian Gaming Association to discuss pending federal Indian gaming legislation. The Association has a membership of 10-11 Indian tribes and does not speak for the Red Lake Band of Chippewa Indians or any of the other approximately 390 Indian tribes.

DISCUSSION

Indian tribes are sovereign, having possessed and exercised from time immemorial the power of self-government within the boundaries of their respective territories. Their laws have historically included the authorization and regulation of Indian and non-Indian gaming activities such as intra-tribal and inter-tribal games of chance, hand games, stick games, moccasin games, and more recently, bingo. Tribally regulated gaming operations have had a positive impact upon the economy of Indian reservations and surrounding communities.

The historical right of tribal self-government has been consistently recognized throughout history by the executive, the congressional, and the judicial branches of the Federal Government.

On July 8, 1970, in a Message to Congress, then President Richard M. Nixon declared the national Indian policy of "Self-determination without Termination." Recently, in his Indian Policy Statement of 1983, President Reagan reaffirmed the inherent sovereignty of Indian tribes and the government-to-government relationship between Indian tribes and the United States.

The sovereignty of Indian tribes and the importance of strengthening their governments are explicitly recognized by the Congress in the "Congressional Statement of Findings" and "Congressional Declaration of Policy" set forth in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450, 450a, and other significant federal Indian legislation.

In February 1987, in California v. Cabazon Band of Mission Indians, the United States Supreme Court held that Indian tribes have inherent sovereignty to operate and regulate tribal bingo and card games outside the scope of state and county regulatory law. In its opinion, the Court considered traditional notions of Indian sovereignty, the congressional goal of Indian self-government, and the need to encourage tribal self-sufficiency, and found that state and county gaming regulation would impermissibly infringe on tribal self-government.

Indian tribes have been successful in their gaming operation and regulation under tribal laws. These operations have been free from the interference of organized crime. Orderly, crime-free gaming activities continue to be conducted on the Red Lake Band's Reservation. No proof or even allegation of the actual existence of "organized crime" has been made in any of the litigation and congressional hearings on Indian gaming activities. In Cabazon, the Supreme Court noted that at no time did California state there was any criminal or organized crime involvement in the tribal gaming enterprises.

For the Federal Government to impose upon Indian tribes federal bureaucratic control over what have become successful business activities developed solely through tribal self-determination would constitute a derogatory interference with tribal self-government and a breach of faith by the Federal Government. I ask the question, "Why impose upon Indian tribes, without their consent, federal bureaucratic interference in business operations recently upheld by the United States Supreme Court and successfully regulated by Indian tribes." I ask this especially in view of the miserable track record of the federal bureaucratic control of Indian activities and resources.

Indian tribes and their respective reservations differ in geography, reservation economies, environmental considerations, tribal government strength, land status, and their relationships with the state governments and non-Indian communities. This leads to the logical conclusion that the mandatory imposition of standardized federal regulation of all Indian gaming activities is a mistake. If gaming legislation is enacted, we request that it include a specific exemption for the Red Lake Band. At the very least such legislation should apply only to those tribes specifically consenting to its application. There is ample legislative precedent for this approach. Public Law 280 excepted the Red Lake Reservation from its application of state civil and criminal jurisdiction. Applicability of most provisions of the Indian Reorganization Act is dependent upon tribal consent. The Indian Civil Rights Act provides that states may now assume criminal and civil jurisdiction in Indian country only with tribal consent.

Both gaming bills under consideration by this Committee conclude correctly that 25 U.S.C. § 81 does not provide standards for approval of management contracts. These bills erroneously assume that the proposed bureaucracy, the "National Indian Gaming Commission", will be more forthcoming with regulations than its parent, the Secretary of the Interior. Since the origin of the requirements of § 81 in the 1800s, Interior has never published comprehensive, substantive regulations. On the other hand, the majority of Indian tribes using management companies have taken considerable pains to negotiate sound contracts. In any event, § 81 was never intended to address these types of agreements nor was it intended to provide more than a technical, cursory review of contracts dealing with tribal lands.

Of course, tribes have made some mistakes in the selection and use of management companies. The right to make mistakes and to learn from them is no less a tribal than a federal right. I understand that tribes are learning from and correcting those previously existing unfair contracts.

Most tribes, such as Red Lake, manage their own gaming and are capable of negotiating fair and equitable management contracts on their own. It is, therefore, unfortunate that the bills assume that appointed bureaucrats will be more competent than tribal governments to approve management contracts, tribal ordinances and resolutions.

The proposed legislation also grants the Chairman of the National Indian Gaming Commission the sole authority to determine whether a gaming activity is illegal. This is a serious infringement on tribal sovereignty. It usurps tribal legislative and judicial authority, and creates a barrier to tribal access to the federal court system and its constitutional protections. I cannot understand how a bureaucrat will be more knowledgeable and competent than Indian tribal governments and the federal judiciary.

Finally, the funding of the Commission through assessments from tribal gaming activities would, in effect, constitute a federal, congressionally authorized income tax on Indian tribes and fly in the face of longstanding federal policy not to tax Indian governments. Such an assessment would, in effect, tax the gross revenue of tribal businesses, income used solely for tribal operations, economic development and the general welfare of the tribal members. The Commission would also require substantial congressional appropriations. Creation of a new bureaucracy is unthinkable at a time when there are insufficient funds to support existing bureaucracies.

This is an era of tribal management in every aspect of tribal economic and natural resources. State political interests have always fought tribes as resource managers. Look, for example, at the stormy history preceding and following the Boldt decision and its affirmation by the United States Supreme Court. In my opinion the legislation proposed here today simply attempts to hide political concerns behind expressions of concern for tribes. The bills erroneously declare that the establishment of federal standards and a National Indian Gaming Commission are necessary to meet "congressional concerns" about gaming and to protect tribes. I ask you, Mr. Chairman and members of the Committee, to look behind the terminology "congressional concerns" to see if it does not, in fact, refer to political concerns about state and local constituents' unfounded fear of crime and big gaming interests' fear of competition.

Thank you, Mr. Chairman and members of the Committee for your time and consideration. I will be happy to answer any questions which you may have.

OFFICERS
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ROYCE GRAVES, SR. Secretary
JAMES STRONG Treasurer

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[Revised Constitution and By-Laws, January 6, 1959]
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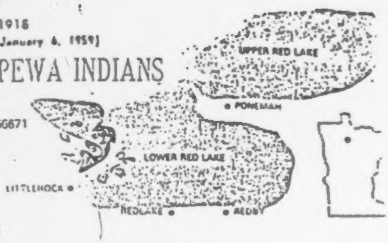

RESOLUTION NO. 135-86

OPPOSING ADOPTION OF H.R. 1920 A BILL IN THE CONGRESS OF THE UNITED STATES "to establish Federal standards and regulations for the conduct of gaming activities on Indian Reservations and lands, and for other purposes".

WHEREAS, the Red Lake Band of Chippewa Indians is an Indian Tribe recognized by the United States and State of Minnesota as a sovereign Indian tribe possessing and exercising from time immemorial the powers and right of self-government within the boundaries of the Red Lake Band of Chippewa Indians Reservation located within the State of Minnesota; and,

WHEREAS, in January, 1983, the President of the United States issued a document entitled "the President's Indian Policy Statement" which recognized and confirmed the historical inherent sovereignty of Indian tribes and declared there will be a recognition of a government-to-government federal/tribal relationship; and,

WHEREAS, the Red Lake Band of Chippewa Indians from time immemorial have established tribal laws governing the Red Lake Band Indian lands and Reservation, which have included the authoriztion and regulation of gaming activities participated in by Indian and non-Indians including the intra-tribal and inter-tribal games of chance, hand games, stick games, moccasin games and bingo which was introduced to the Indians by the missionaries of organized religion; and,

WHEREAS, Tribal operation and licensing of gaming activity have provided revenues for tribal government operations and economic and social development programs on the Reservation; and,

WHEREAS, the Red Lake Band and the other Indian tribes have been successful in their operation and licensing of gaming activity on their Reservations, under tribal laws and regulations adopted by the Indian Tribal Governing Body, which operations have been free from the interference of organized crime, and those who would defraud or otherwise attempt to exert corrupt influence upon the Indians; and,

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ADVISORY COUNCIL
7 HEREDITARY CHIEFS

LEGAL COUNSEL
EDWARDS EDWARDS BODIN
DULUTH, MINNESOTA

TRIBAL COUNCIL
Organized April 18, 1918
(Revised Constitution and By-Laws, January 6, 1959)
RED LAKE BAND of CHIPPEWA INDIANS
Phone 218/679-3341
RED LAKE, MINNESOTA 56671

UPPER RED LAKE
PONEMAH
LOWER RED LAKE
LITTLEROCK
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WHEREAS, that without exception the only successful business operations on the Red Lake Band Reservation have been businesses conducted and regulated by the tribe and its members free of federal regulations and bureaucratic control; and,

WHEREAS, since it has been judicially established that Indian tribes have the exclusive right to regulate gaming activity on Indian lands, which is not specifically prohibited by federal law and which is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity, all the states except for a few isolated occasion have recognized that the Indian tribes have conducted themselves responsibly in their gaming activity operations, and the positive impact to tourism, jobs and revenue generation which far outweigh the occasional unfounded sensationalized fearmongering warnings about "mafia infiltration" and that the Indian Tribal Government are incompetent to regulate the activity; and,

WHEREAS, by Resolution No. 70-84 adopted by the Red Lake Band Tribal Council on March 30, 1984 the Red Lake Band opposed the Adoption of H.R. 4566, which had been introduced in Congress as "A Bill to establish Federal standards and regulations for the conduct of Gambling Activities within Indian Country, and for other purposes" which resolution is reaffirmed and encorporated herein by reference;

NOW, THEREFORE, BE IT RESOLVED, that the Red Lake Band does hereby oppose adoption by Congress of H.R. 1920 in its entirety or any other legislation that would have the purpose of imposing upon Indian tribes Federal Standards and Regulations for the conduct of gaming activity on Indian Reservation lands, for the reason that such legislation;

1. Violates the historical Indian tribe right of tribal self government and is contrary to the "President's Indian Policy Statement" and the "Indian Self-determination Policy" set by Congress in Public Law 93-638, and

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2. Is erroneously predicated on the stated assumption that "Federal standards or regulations are necessary to insure the orderly conduct of gaming activities on Indian lands", which is nothing more than a fearmongering unfounded statement, and

3. Erroneously "declares that the establishment of federal standards for gaming activity on Indian lands and a National Indian Gaming Commission are necessary to meet the concerns regarding gaming activities and to protect such activities as a means of generating tribal revenue" which is a self-serving unfounded declaration predicated by unfounded fearmongering concerns, and

4. Erroneously states "there are no existing statutes which require approval of management contracts dealing with Indian gaming' which ignores Federal Statute 25 USC Sec. 81 which requires the Secretary of Interior approval of contracts made with Indian tribes and is erroneously predicated on the unfounded fearmongering assumption that the Indian tribes and Secretary of Interior are incompetent, and the Chairman appointed by the Secretary of the Interior of the proposed newly created bureaucracy of the "National Indian Gaming Commission" would be competent, and

5. Abolishes tribal government control and places in the Federal Government appointed Chairman of the proposed "National Indian Gaming Commission" exclusive power to control Indian Reservation gaming activity through his "exclusive power" (1) to approve tribal ordinances or resolutions regulating Class II gaming (bingo and other similar gaming defined by the bill), and (2) to approve management contracts for Class II gaming, and

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JAMES STRONG, Treasurer

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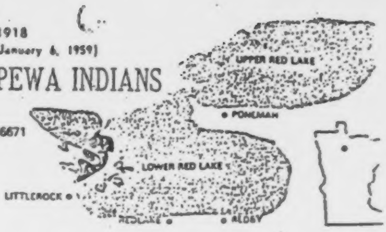

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Page four

6. Limits the authority of the seven voting members of the proposed "National Indian Gaming Commission" to the approval of administrative functions, reducing them to a rubber stamp Commission, and

7. Abolishes tribal government control of Class III gaming (which is all other gaming except traditional games Class I, and Bingo and similar games Class II) and provides for operation only with approval and licensing by the "National Indian Gaming Commission" and under regulations and standards imposed by the States, and

8. Will result in bureaucratic destruction of a business which provides revenue for tribal government operations and economic and social development by Federal Bureaucratic interference.

BE IT FURTHER RESOLVED, that if any Federal Legislation is enacted imposing upon Indian Tribes Federal Standards and Regulations for the conduct of gaming activity within Indian Country that the Red Lake Band of Chippewa Indians be exempted from its application.

FOR: 9
AGAINST: 0

We do hereby certify that the foregoing resolution was duly presented and enacted upon at the Regular Meeting of the Tribal Council held on Wednesday, July 16, 1986, with a quorum present at the Conference Room, Red Lake Tribal Council Office, Red Lake, Minnesota.

Roger A. Jourdain
Roger A. Jourdain, Chairman

Royce Graves, Sr.
Royce Graves, Sr., Secretary

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DOYLE GRAVES Sr. Secretary
JAMES STRONG Treasurer

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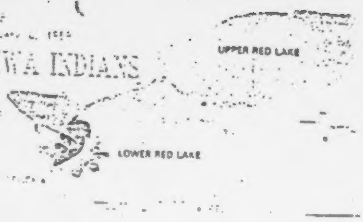

RESOLUTION NO. 70-84

Opposing H.R. 4566 entitled "A Bill to establish Federal standards and regulations for the conduct of gambling activities within Indian Country, and for other purposes".

WHEREAS, in January, 1983, the President of the United States issued a document entitled "The President's Indian Policy of 1983" which recognized the inherent sovereignty of Indian Tribes and declared there will be a recognition of a government-to-government federal/tribal relationship, and;

WHEREAS, the United States Federal Courts have held that Indian Tribes have the exclusive right to regulate gambling activity which is not prohibited by Federal or State law in Irdian Country, and;

WHEREAS, a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal governments, and;

WHEREAS, Tribal operation and licensing of gambling activities is a legitimate means of generating revenues for tribal government operations and economic development programs, and;

WHEREAS, Indian Tribes have been successful in their operation and licensing of gambling activities in Indian Country, under tribal Ordinances and Regulations adopted by the Indian Tribal Governing Body, and;

WHEREAS, there is ample provision under existing Federal Law, which requires the licensing of outsiders who trade with Indians, by the Secretary of Interior, which if properly applied by the Secretary of Interior, would insure the orderly conduct of gambling activities within Indian Country, free from the influence of organized crime, racketeers, professional gamblers, and those who would defraud or otherwise attempt to exert corrupt influence upon the Indians, and;

EXHIBIT B

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Roger A. Jourdain, Chairman
Bruce Graves, Sr., Secretary
James Strong, Treasurer

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Anthony Wilson
Gerald F. Jones
Adolph Barrett
Gerald F. [illegible]
[illegible] P. Stately Jr
Lawrence [illegible]
Allen English Jr

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LEGAL COUNSEL
Edwards Edwards Bodin
Duluth Minnesota

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WHEREAS, the Secretary of Interior has consistently failed to perform the trust responsibilities of his office in respect to the management of the Red Lake trust properties and tribal trust fund accounts so that the Red Lake Tribal Sawmill, which by the Act of 1916 was placed under the management and supervision of the Secretary of Interior, is now bankrupt and the Secretary of Interior has been unable to furnish the Red Lake Band with an accounting of his operations of the sawmill, and has also been unable to furnish the Red Lake Band with an accounting of the tribal trust funds administered by the Secretary of Interior, and;

WHEREAS, there are now pending, at the unneccesary cost of the Red Lake Band, three separate lawsuits against the United States and Secretary of Interior involving the mismanagement by the Secretary of Interior of tribal trust properties and his failure to furnish accountings to the Red Lake Band of his trust administration of tribal trust funds, and;

WHEREAS, the Red Lake Band through it's tribal governing body has successfully managed tribal enterprises and tribal accounts which have not been under the supervision of the Secretary of Interior in contrast to the miserable tract record of the Secretary of Interior in respect to those operations under his supervision and management, and;

WHEREAS, H.R. 4566 entitled "A Bill to establish Federal standards and regulations for the conduct of gambling activities within Indian Country and for other purposes" proposes Federal Regulation over a matter the Federal Courts have held is within the exclusive jurisdiction of the Indian Tribes, and in effect transfer what is the exclusive right of the Indian Tribes to the Secretary of Interior.

NOW, THEREFORE, BE IT RESOLVED, that the Red Lake Band does hereby oppose H.R. 4566 in it's entirety or any other legislation that would have the purpose of imposing upon Indian Tribes, Federal Standards and Regulations for the conduct of gambling activities

OFFICERS
ROGER A. JOURDAIN, Chairman
ROYCE GRAVES, SR., Secretary
JAMES STRONG, Treasurer

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ADVISORY COUNCIL
[illegible] CHIEFS

LEGAL COUNSEL
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DULUTH, MINNESOTA

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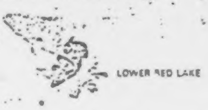

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BE IT FURTHER RESOLVED, that if any Federal legislation is enacted imposing upon Indian Tribes Federal Standards and Regulations for the conduct of gambling activities within Indian Country that the Red Lake Band of Chippewa Indians be exempted for its application.

FOR: 9
AGAINST: 0

We do hereby certify that the foregoing resolution was duly presented and enacted upon at the Special Meeting of the Tribal Council held on Friday, March 30, 1984, with a quorum present at the Tribal Office, Red Lake, Minnesota.

Roger A. Jourdain

Roger A. Jourdain, Chairman

Royce Graves Sr.

Royce Graves, Sr., Secretary

PREPARED STATEMENT OF NORA GARCIA

Mr. Chairman, and members of the Committee, my name is Nora Garcia. I am the chairperson of the Fort Mojave Indian Tribe of Arizona, California and Nevada. On behalf of the Fort Mojave Indian Tribe, I would like to deliver this testimony concerning the proposed Indian Gaming Regulatory Act.

There are currently four versions of the Act in Congress. The Tribe supports Senator Inouye's bill, S.555, with two caveats. First, with respect to the regulation of Class III gaming, there is a need for a provision which would authorize the Tribe, with the consent of the Secretary, to conduct Class III gaming within Nevada under the jurisdiction of the National Indian Gaming Commission, in case the Tribe and the state of Nevada are unable to reasonably agree upon the terms and conditions of a jurisdictional transfer. Secondly, in order to comport with the special concerns expressed by Nevada in its regulation of casino type gaming, provision must be made allowing for a redefinition of Class III gaming to include, for purposes of Nevada only, both Class II and Class III gaming. The Fort Mojave Tribe recommends that these provisions be added to S.555. A more detailed discussion of the Tribe's recommendations in this respect is set forth below.

Section 11 (d)(2) of S.555 authorizes Class III gaming in states where such gaming is legal, provided that the Tribe transfers certain criminal and civil jurisdiction over such gaming to the State. The Fort Mojave Tribe supports such a provision. The Tribe recognizes the many difficulties which would arise in regulating casino type gaming, not the least of which is the susceptibility of such gaming to corrupt influences. The Tribe also recognizes the importance of fair and honest gaming to the continued success of the gaming enterprise. A cession of regulatory jurisdiction over casino type gaming to Nevada, a state which has in place the system and experience necessary to successfully regulate casino type gaming, would only benefit the Tribe. Nor would a provision of this kind impair or undercut tribal sovereignty through a direct application of state law to Indian Country, since the state would have no jurisdiction without the Tribe's consent, and unless the Tribe essentially invited the state onto the reservation. The Tribe's voluntary cession of certain jurisdiction to the State is perfectly consistent with its sovereign authority over its territory.

Present federal law makes it unlawful "to manufacture, recondition, repair, sell, transport, possess or use any gambling device . . . within Indian Country . . ." (15 U.S.C. Section 1175). As a result, although casino type gaming is legal in Nevada, it is illegal in the Nevada portions of the Fort Mojave Indian Reservation. Because of Section 1175, the Fort Mojave Tribe has been placed at a disadvantage by being unable to compete with Nevada's casinos, and has therefore lost an important means by which to promote economic development and self-sufficiency on the reservation. S.555 would reverse this result and allow the Tribe to conduct Class III gaming on an even par with the state. The Fort Mojave Tribe therefore, fully supports this aspect of the legislation, and the provision of S.555 modifying Section 1175.

However, as I mentioned by way of introduction in this statement, the one aspect of S.555 which troubles the Tribe is the absence of an alternative for the Fort Mojave Tribe to conduct Class III gaming if Nevada unreasonably refuses to agree to a jurisdictional transfer. In such a case, the provisions of S.555 pertaining to Class III gaming become meaningless, and the Tribe is back to square one, prohibited by 15 U.S.C. Section 1175 from conducting casino type gaming on the Nevada portion of the reservation. In order to prevent this result, there must be a safety valve provision put in Section 11(d)(2) of S.555, which would allow the Tribe to conduct Class III gaming under the supervision of the National Indian Gaming Commission in case the Tribe and Nevada cannot agree upon the terms of a jurisdictional transfer. Additionally, in order to insure good faith dealing on the part of both Nevada and the Tribes, provision should be made which conditions the transfer of Class III gaming to the Commission upon the Secretary's determination that Nevada's refusal to take jurisdiction was unreasonable. In other words, if after negotiations between the Tribe and state, the secretary determines that the state's acceptance of jurisdiction was unreasonably withheld, the Secretary would authorize the Commission to take jurisdiction of Class III gaming.

Such an addition would preserve the substantive benefits of Section 11(d)(2), and at the same time would also ensure the adequate supervision and regulation of casino type gaming, substituting the National Indian Gaming Commission for the state of Nevada as the regulatory entity.

In anticipation of the passage of S.555, and in an effort to gain Nevada's support of the bill, the Fort Mojave Tribe is currently negotiating an intergovernmental agreement with Nevada.

The intergovernmental agreement will provide for the jurisdictional transfer of the type contemplated and authorized by Section 11(d)(2) of S.555. That is, with the consent of the Secretary, the Tribe will voluntarily transfer all civil and criminal jurisdiction over casino type gaming, except for taxing authority to Nevada, subject to the terms and conditions of the intergovernmental agreement.

During the course of our negotiations, the state of Nevada has indicated that it would be impractical for Nevada to regulate Class III gaming while at the same time other games within Class II gaming would be regulated by the National Indian Gaming Commission. Thus, under the current version of S.555, one would have casino blackjack and poker regulated by the Commission, while the other Class III games would be regulated by Nevada. Nevada has indicated its unwillingness to regulate under such a dual scheme. This would be an impediment to a jurisdictional transfer. The Tribe therefore, suggests a provision in S.555 which would authorize a jurisdictional transfer over all casino type gaming, including bingo and card games as suggested by Nevada. It is the Tribe's understanding that Nevada would define only two classes of gaming. Class I would be traditional gaming under the exclusive jurisdiction of the tribes, and Class II gaming which would include all other gaming. Because of the unique concerns of the state of Nevada with regard to a unitary regulatory system for all games authorized by law, the Fort Mojave Indian Tribe would recommend that for purposes of the Nevada Indian Tribes, gaming be defined as proposed by the state of Nevada. In that Nevada is the only state in which casino-type gaming is authorized that also has Indian reservations within its boundaries, the Tribe feels compelled to support Nevada's definitions but would limit the two tiered definitions to the state of Nevada only. To apply Nevada's definitions to all tribes throughout Indian Country would be a grave injustice to Indian tribes and a major affront on tribal sovereignty.

With the implementation of the above suggestions, the Fort Mojave Indian Tribe lends its full support to S.555.

Nora Garcia

Nora Garcia, Chairperson
Fort Mojave Indian Tribe

PREPARED STATEMENT OF REV. MSGR. JOSEPH A. DUNNE

The National Council on Compulsive Gambling, Inc. is a non-profit organization founded in 1972 in New York City. Its purpose is the dissemination of information and education on compulsive gambling as a treatable illness, having been recognized as such by the American Psychiatric Association in the Diagnostic Statistical Manual of Mental Disorders III, 312.31 and identified as "pathological gambling."

The National Council does not oppose or endorse gambling. We recognize the freedom of people to gamble. In 1976, the Commission on the Review of the National Policy Toward Gambling concluded that 68% of adult Americans gamble - that there are 1.1 million compulsive gamblers and that the incidence of compulsive gambling is directly related to availability. Therefore, we at the National Council view legislation increasing Indian gaming as loaded with dangers to Native Americans and the surrounding community as proposed in HR 964 and HR 2507 with their accompanying Senate bills.

Current research conducted under the auspices of the National Council has revealed that in those states which have legalized gambling, up to 2% of the adult population who gamble will become compulsive gamblers. In New York State this would amount to 250,000 and nationally more than six million compulsive gamblers. The state lotteries which have been glorified as a form of painless taxation and a new source of income for education and funding for the elderly, represent a real threat to the health and welfare of our nation, in that this policy places the state in the gambling business and unlike alcohol legislation where the state merely legalizes the sale of alcoholic beverage, the state promotes gambling - a form of risk taking behavior which is addictive and thus creates victims of public policy.

This Committee must be aware of the fact that to date only seven states out of twenty legalizing this form of gambling have recognized the inherent danger and provided money for public education/prevention, training, treatment and research on compulsive gambling as a treatable illness. None of the proposed legislation on Indian gaming mentions the responsibility of the federal government or Indian authorities for the provision of adequate treatment for addicted Native Americans or other participants of gaming, in the proposed legislation.

After twenty-five years of experience and training in the field of addiction and serving as a member of the Block Grant Advisory Council of the State of New York for the Office of Mental Health, the Division of Substance Abuse and the Division of Alcoholism, I can assure the Committee that the proposed legislation will seriously impair first of all, Native Americans, residents on the reservation, who already combat the problem of poverty, alcohol and drug addiction and who can be easily lured into the fantasy of the "big win," as a solution to their life's problems. Secondly, those states which have refused to enact gambling legislation and those communities who already have enacted state controlled gambling activities cannot compete with large scaled gambling opportunities offered currently on reservations. Therefore, my reaction to the proposed legislation with the exception of that drafted by the Department of Justice and the Department of Interior (2XXXX), would be one of opposition on the grounds of its lack of legal control and the failure to fulfill the strict requirements necessary for all gambling operations in the United States. When we review the huge and detailed efforts on the part of the Attorney General of the State of New Jersey to investigate and monitor the Casino Industry in Atlantic City, we can appreciate the difficulty envisioned by the proposed legislation for Indian Reservations.

The members of this Committee are therefore requested to look to adequate safeguards including treatment, and Gamblers Anonymous meetings, in view of the incidence of compulsive gambling in America today. Problem gamblers are controlled by the fantasy of the "big win," the loss of money, borrowing then stealing and embezzlement which is accompanied by guilt feelings, frustration plus the need to be "in action," causing further family loss, separation, divorce and attempts at suicide. The need therefore is for intervention, education and treatment.

Today thousands of compulsive gamblers languish in jail because we as a nation have not recognized compulsive gambling as a treatable illness and have legalized a form of recreation which is licit for the majority but a horror for its' victims.

PREPARED STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

MR. CHAIRMAN. I AM PLEASED TO APPEAR BEFORE THIS COMMITTEE TO SHARE SOME OF MY VIEWS ON INDIAN GAMING. I CONGRATULATE THE CHAIRMAN FOR HOLDING THIS HEARING AT THIS TIME AND FOR HIS LEADERSHIP ON THIS ISSUE.

I TESTIFIED BEFORE THIS COMMITTEE A YEAR A AGO. AT THAT TIME I SUPPORTED THE NEED FOR FEDERAL LEGISLATION IN THIS AREA AND I CONTINUE TO SUPPORT THE NEED FOR APPROPRIATE FEDERAL LEGISLATION. SINCE LAST YEAR THE SUPREME COURT HAS RULED IN CABAZON BAND OF MISSION INDIANS V. COUNTY OF RIVERSIDE. BEFORE I DISCUSS THIS CASE AND MY VIEWS ON THE PENDING LEGISLATION, LET ME MAKE SOME GENERAL COMMENTS.

I AM HOPEFUL THAT TODAYS DISCUSSION WILL FOCUS ON THE LEGITIMATE CONCERNS OF THE INDIAN TRIBES, THE STATES, THE GAMING COMPETITORS, THE FEDERAL GOVERNMENT, AND THE GENERAL PUBLIC. CERTAINLY INDIAN GAMING WOULD NOT BE AS ATTRACTIVE AN ECONOMIC ENTERPRISE WERE IT NOT FOR THE DEPRESSED ECONOMIC CONDITIONS ON INDIAN RESERVATIONS. I DO NOT QUESTION THE REASONS WHY TRIBES ARE LOOKING TO GAMING AS A REVENUE-PRODUCING ACTIVITY. SUCH FUNDS HAVE BEEN USED TO THE BENEFIT OF TRIBAL MEMBERS -- TO IMPROVE SOCIAL SERVICES, LAW

ENFORCEMENT, HEALTH, EDUCATION AND OTHER GOVERNMENTAL INTERESTS OF THE TRIBE.

AS A FORMER ATTORNEY GENERAL OF NEW MEXICO I AM ACUTELY AWARE OF THE CONCERNS OF STATE OFFICIALS ABOUT INDIAN GAMING, AS WELL AS THE INTERESTS OF TRIBAL GOVERNMENTS IN THE ECONOMIC BENEFIT DERIVED FROM GAMBLING. NEW MEXICO HAS SEVERAL TRIBES CURRENTLY OPERATING BINGO GAMES. I AM NOT AWARE OF ANY LAW ENFORCEMENT PROBLEMS CREATED BY THESE GAMES, AND I DO NOT OPPOSE THEM. HOWEVER, IT IS IMPORTANT TO NOTE THAT MORE EXTENSIVE TRIBAL GAMBLING IS UNDER DISCUSSION. I ALSO REALIZE THAT THERE IS CONSIDERABLE PUBLIC OPPOSITION TO EXPANDED GAMBLING ACTIVITIES ON THE RESERVATION. PARI-MUTUAL DOG RACING, WHICH IS CRIMINAL UNDER NEW MEXICO LAW, WAS DISAPPROVED BY THE SECRETARY OF INTERIOR IN A RULING LAST YEAR. THE U.S. DISTRICT COURT OF NEW MEXICO RECENTLY HELD IN SANTA ANA PUEBLO V. HODEL, THAT PARI-MUTUAL DOG RACING IN THE STATE OF NEW MEXICO IS NOT PERMITTED, EVEN THOUGH NEW MEXICO PERMITTED PARI-MUTUAL HORSE RACING, AND THAT THEREFORE THE SECRETARY OF THE INTERIOR'S DECISION TO DISAPPROVE OF THE PUEBLO'S EFFORTS TO CONSTRUCT AND OPERATE A PARI-MUTUAL DOG RACING FACILITY WAS PROPER.

ON FEBRUARY 25, 1987, THE U.S. SUPREME COURT HELD IN A 6-3 OPINION, THAT CALIFORNIA MAY NOT REGULATE BINGO AND GAMBLING ON THE CABAZON AND MORONGO RESERVATIONS IN THAT STATE BECAUSE CONGRESS HAS NOT GRANTED THE STATE AUTHORITY TO

DO SO (CALIFORNIA V. CABAZON BAND OF MISSION INDIANS, NO. 85-1708). THE COURT RULED THAT NEITHER P.L. 280, WHICH GRANTS CALIFORNIA CRIMINAL JURISDICTION OVER OFFENSES COMMITTED IN INDIAN COUNTRY LOCATED WITHIN THE STATE, NOR THE 1970 ORGANIZED CRIME CONTROL ACT, WHICH MAKES CERTAIN VIOLATIONS OF STATE GAMBLING LAWS FEDERAL OFFENSES, EXPRESSES THE CONSENT OF CONGRESS TO THE APPLICATION OF CALIFORNIA STATE STATUTES OR MUNICIPAL ORDINANCES TO SUCH ACTIVITIES. IT, OF COURSE, REMAINS TO BE SEEN HOW THE STATE WILL INTERPRET THIS OPINION, AS WELL AS HOW CONGRESS MAY REACT TO IT. OBVIOUSLY I LOOK FORWARD TO HEARING THOSE EXPERT WITNESSES WHO ARE TESTIFYING TODAY.

SEVERAL PIECES OF LEGISLATION WERE CONSIDERED IN THE 99TH CONGRESS, INCLUDING AN ADMINISTRATION BILL WHICH I SUPPORTED. THAT BILL, I FELT, STRUCK THE BEST COMPROMISE IN BALANCING THE VARIOUS INTERESTS. THAT BILL WOULD HAVE LEGALIZED BINGO ON INDIAN RESERVATIONS, BUT LINKED ALL OTHER FORMS OF GAMBLING IN WHICH NON-INDIANS ARE INVOLVED TO THE EXACT GAMES ALLOWED BY STATES UNDER THE SAME REGULATIONS AS ARE IMPOSED BY THE STATES. NONE OF THE OTHER BILLS INTRODUCED SATISFACTORILY RESOLVED THIS CENTRAL ISSUE.

ALTHOUGH THAT BILL HAS NOT BEEN RESUBMITTED AT THIS TIME IN THE 100TH CONGRESS, THERE ARE SEVERAL NEW BILLS UNDER CONSIDERATION, IN PARTICULAR S. 555 AND S. 1303, WHICH ARE BEING CONSIDERED TODAY. S. 555, WHICH IS SPONSORED BY THE

DISTINGUISHED CHAIRMAN OF THIS COMMITTEE, SENATOR INOUYE, WOULD REGULATE GAMING ON INDIAN LANDS. S. 1303, INTRODUCED BY THE DISTINGUISHED SENATOR FROM ARIZONA, SENATOR MCCAIN, WOULD ALSO ATTEMPT TO REGULATE GAMING ON INDIAN LANDS. THERE ARE KEY DIFFERENCES IN THESE BILLS WHICH I AM SURE WILL BE DISCUSSED IN DETAIL AT TODAY'S HEARING. SEVERAL OTHER BILLS HAVE ALSO BEEN INTRODUCED AND ARE UNDER CONSIDERATION IN THE HOUSE AND SENATE. THERE ARE IMPORTANT FEATURES IN EACH OF THOSE BILLS, AND I AM HOPEFUL THAT APPROPRIATE LEGISLATION CAN BE DEVELOPED BASED ON THE DISCUSSIONS HELD TODAY.

I HOPE MY COMMENTS ARE HELPFUL TO THE COMMITTEE IN RESOLVING THIS ISSUE. I LOOK FORWARD TO ASSISTING THE COMMITTEE IN WHATEVER WAY I CAN IN REACHING AN AGREEMENT ON THIS IMPORTANT ISSUE.

THANK YOU, MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE.

PREPARED STATEMENT OF CHARLES W. BLACKWELL, J.D., AMERICAN INDIAN TRIBAL GOVERNMENT AND POLICY CONSULTANTS, INC.

On behalf of my tribal clients, Federally recognized and non-Federally recognized, some of whom play bingo, some of whom who intend to and some of whom never will, I have the following observations and comments:

1.) It must be made absolutely clear that Section 4.B.2 dealing with tribes taking lands into trust as part of becoming federally recognized allows for using the legislative or executive process as well as the administrative. Change "...Federal acknowledgement process." to "...or is federally recognized by any process."

2.) Language on the applicability of the Internal Revenue Code is unacceptable because it appears to create IRS authority to tax tribes. The intent is unclear. Too vague to be useful. Distinguish between taxation and the withholding of taxes.

3.) Any deference to state and local authority is contrary to the Federal-Tribal trust relationship. Congress should protect tribal sovereignty as zealously as the tribes do. Page 4, lines 8-12 should be removed.

4.) Oklahoma Indian tribes should be given specific authority to return former reservation lands to trust status for purposes of gaming activities regulated by this legislation. Assistant Secretary Swimmer has specifically refused to do so mandating that such language be included in this legislation. This will give Oklahoma Indians non-discretionary authority to use their lands to the fullest.

5.) The National Indian Gaming Commission must be given clear and straightforward authority to function through the Department of Interior but completely independent and apart from the Bureau of Indian Affairs.

6.) Per capita payments from gaming activity revenues should be done with the mandatory advice of the Commission.

7.) The Commission should be required to establish a procedure in cooperation with the Federal Bureau of Investigation and/or Justice Department to facilitate required background investigation on primary management officials and key employees. All Venture capital partners, including silent partners, should be specifically included in the background clearance requirement.

8.) State gaming laws must not be used as the standard of acceptability for tribal gaming laws. Such a requirement erodes sovereign tribal government regulatory authority.

9.) Reduce the time for the Commission to review and/or approve tribal gaming ordinances to thirty calender days from the date of submission. As in other places, language in this section (11.d) gives the Commission Chairman too much discretionary authority thereby relegating the Commission to a position of lesser authority.

10.) Remove the intent and authority of the Commission to issue tribal certificates of self-regulation. Federal monitoring and assistance should be on-going in the best interests of all parties. Circumstances and people change. As proposed this creates too much opportunity for the Commission to become involved in the internal affairs of tribes.

11.) Commission action on Class III license applications should be reviewed and acted upon within 60 calender days from date of submission or longer only with the advice and consent of the affected tribe.

12.) State regulatory standards must not be used by the Commission to regulate Class III tribal gaming activities. The Commission should promulgate its own standards. The proposed legislation gives the state standards too much weight and the Commission-Chairman too much discretionary authority.

13.) The suggested length of term for management contracts (7 years) is arbitrary and must provide for options to renew. To impose this limits the tribal negotiating power.

14.) Tribal termination of contracts should require the advice of the Commission in an effort to protect management contractors and investors from arbitrary tribal actions.

15.) To set a cap of forty percent on a management fee is arbitrary and greatly diminishes the tribal negotiating authority. This should be left to the discretion of tribal decision-makers. Contract approval should occur within sixty days and approval or disapproval should be done by a majority vote of the Commission. As is, Sec.13.(d) through (k) gives the Chairman a dangerously high level of discretionary authority. The role of the Commission itself in this process should be elevated. The role of the Chairman should be clarified as the person who carries out the administrative duties of the Commission.

16.) Sec. 14. (a) "...for the Commission's review within thirty calender days of..." Throughout this section, the Chairman is given too much discretionary authority.

S.555

Sec.5. The Chairman should serve for a minimum of five years at the discretion of the President with the advice and consent of the Senate.

Sec.6. The powers granted to the Chairman are too broad and discretionary. It has the effect of diminishing the role of the Commission. There should be more advice and consent requirements.

Sec.11. State licensing standards should not be imposed on the tribes. (2)(A) Jurisdiction for any tribal matter should be under the tribe. This section is unnecessary and creates a basis for state interference and infringement on tribal authority.

Sec.12. Provision should be made for options to renew. A cap of thirty (30%) percent for a management fee is arbitrary and unreasonable and it greatly reduces tribal negotiating ability.

Sec.13. Who shall enforce rulings of the Commission?

Sec.20. Delete required concurrences of the Governor of the State. "...under the Federal Acknowledgement process,..." should be changed to "...tribes granted Federal trust status by executive legislation or administrative process." This legislation would seem to restrict tribal Federal recognition to the administrative process and this is undesirable for many non-Federally recognized tribes who are working for federal recognition.

It should be clearly stated that the Internal Revenue Service is not being granted authority to tax tribes.

Charles W. Blackwell

PREPARED STATEMENT OF DR. LARRY BRAIDFOOT

General Counsel and Director of Christian Citizenship Development
Christian Life Commission
Southern Baptist Convention

My name is Larry Braidfoot. I am General Counsel and Director of Christian Citizenship for the Christian Life Commission of the Southern Baptist Convention. For the last four and one-half years, I have worked extensively on the legalization of gambling as this issue has been debated in many states. In that time I have had the opportunity of working with a wide variety of individuals and organizations who have been concerned about the spread of legalized gambling. I also serve as coordinator for a group of such organizations called the National Coalition Against Legalized Gambling.

I offer testimony in support of S. 555 and H.R. 964, bills which would provide for a necessary involvement on the part of state law enforcement systems and for a more effective approach to dealing with the threat posed by organized crime's infiltration and influence over such gambling operations.

Introducton

I want to address the committee from a different perspective than persons who have in the past offered testimony. I represent the viewpoint that legalized gambling is a destructive and improper activity for government to sanction, support or conduct.

The statement is frequently made that 80% of the American public engages in some form of gambling. While this may be true, the fact remains that whenever the issue of legalized gambling is placed on the ballot, a significant proportion of those voting cast votes against legalization of gambling. For example:

o In recent years, voters in the states of Arkansas, Colorado and Florida have turned aside decisively ballot proposals that would have legalized casino gambling in those states. Year after year similar proposals die in the legislatures of other states.

o Although lottery proposals have been passed by voters in a number of states, winning consistently with voter approval margins of 60% or slightly greater, it should be noted that the opposition to these lotteries has also consistently recorded a disapproval rate of about 40%. The California lottery, the largest in the world, was disapproved at the ballot box by 42% of those casting ballots. In North Dakota, voters turned aside a lottery proposal by a vote of 55% to 45%.

o Pari-mutuel gambling, the most widespread form of legalized commercial gambling, won approval in my own state of Tennessee in recent months by the absolute minimum number of votes needed in each legislative body.

These comments are offered in support of the proposition that there is a substantial portion of the American public which continues to regard legalized gambling as a negative and destructive influence on society. In any given state, at a particular point in time, that portion may have the strength to persuade legislators not to legalize a form of gambling or to defeat a proposal at the ballot box.

The reasons which motivate opposition to legalized gambling are as diverse as those which support legalization proposals. They reflect the broad pluralism of our society.

o Some persons and groups oppose legalized gambling simply on the basis of religious beliefs.

o Other persons and groups oppose legalized gambling because it is viewed as an economic parasite, reallocating consumer spending from normal consumer activities into a gambling enterprise.

o Others oppose legalized gambling because it fails to live up to the economic promises which have been made for it elsewhere.

o Still others oppose legalized gambling because of the socioeconomic consequences associated with it.

The concerns I have verbalized are serious concerns. They are shared, at least in part, by persons who do not share our conclusion that gambling should be illegal.

Mr. Charles Morin, who was chairman of the Presidential Commission on the Review of National Attitudes toward Legalized Gambling in the 1970s, in 1983 made the following statements:

> The conclusion was that where gambling is legal, it didi ncrease the incidence of illegal gaming.
>
> Does legalized gaming offer a major source of government funding? We concluded that it is not significant in relation to the budget in almost any state. I think we would conclude the same today.
>
> Is taxation of gaming particularly regressive? We found that it is, primarily because the survey showed that most gaming was done by the lower and lower-middle classes and that the taxation of those proceeds, if any, was regressive in nature.
>
> Would legalization of gaming lead to a substantial increase in the number of compulsive gamblers? According to the evidence presented in the survey, the answer was a resounding yes.

(Charles H. Morin, "The Presidential Commission on the Review of the National Policy Toward Gambling Revisited," FIFTH ANNUAL GAMING CONFERENCE, 1983. Philadelphia: Laventhol & Horwath, 1983, pp. 54-55.)

The above comments are offered in support of the following set of propositions:

o While legalized gambling is both widespread and enjoying considerable acceptance, there is a substantial portion of the American public which regards this as a destructive phenomenon in our society.

o If the current widespread nature of legalized gambling proves to be temporary and the cycle turns in the direction of eliminating gambling from a legal status, such a cycle will rest in part upon the variety of ills which I have delineated above. In short, it will be the result of a failure of the political process to regulate the activity and to minimize the kinds of ills outlined in the statements by Mr. Morin.

As this committee considers the regulation of gambling on Indian lands, I would urge you to remember the current national policy which implicitly exists regarding gambling.

o Legalization of gambling with a state is a matter to be decided at the state level.

o The primary level of law enforcement related to gambling-related activities is that of state enforcement. When a state legalizes gambling, the citizens of that state have the right to expect the activity to be regulated to the fullest extent necessary to prevent abuses and irregularities.

o The appropriate federal role would appear to be one of neutrality, of assuring the highest degree of state determination consistent with demands related to interstate commerce and interstate crime. Primary concerns related to this are the activities of organized crime.

Organized Crime

A major concern that I share with a number of other persons offering testimony deals with the abililty of tribal regulation of gambling on Indian lands to deal with the menace of organized crime.

In thinking of the matter of regulating organized crime, I would call the committee's attention to but a few stories related to attempts at regulating organized crime in some of its varied involvements:

o One organized crime trial of 18 defendants took 17 months, involved 15,000 exhibits, surveillance in both the United States and abroad, with testimony from 250 witnesses filling 41,000 pages of transcript. (The Washington Post, 3/3/87, A-3.)

o A trial of three Mafia leaders took two months, presented 85 witnesses and involved 150 secretly-taped conversations. (The Washington Post, 1/14/87, A-3.) Their indictment was the result of two and one-half years of investigation and included the assertion that the Mafia had enough power to dictate the selection of the president of the Teamsters Union. (The Washington Post, 3/22/86, A-9.)

o One money-laundering probe by the FBI took 18 months. (The Washington Post, 6/7/85, A-20.)

o An investigation of the Hell's Angels motorcycle gang took three years and reached into 14 cities in 11 states. (The Washington Post, 5/3/85, A-9.)

o The estimated income of organized crime was set almost a decade ago at $150 billion--making organized crime perhaps the second largest industry in the nation. (James Cook, "The Invisible Enterprise," FORBES, 9/29/80, p. 61.)

There is ample evidence that organized crime continues to use legalized gambling as an activity from which to draw income. Various forms of gambling amass considerable sums of money which changes hands in minutely-recorded transactions. Such a situation is strong temptation for organized crime.

o In Atlantic City, U.S. Attorney W. Hunt Dumont said "...organized crime is insidious. It has found...ways to infiltrate the city--through the hotel unions, the Teamsters and construction unions and in subsidiary industries."

Mr. Dumont also has said casinos are growing in popularity for money-laundering operations because federal authorities have cracked down on banks and other financial institutions. (Public Gaming, March '84, p. 7.)

o New Jersey gaming enforcement director O'Brien said organized crime is "significantly involved in ancillary services such as laundries, junket organizations, liquor and food suppliers, and vending machine companies. Once a mob-oriented group, through a front, is able to do business with a casino, they can work a system of extortion and kickbacks." (The

Washington Post, 1/16/84, A-2.)

- Five midwestern mob leaders were convicted of skimming almost $2 million from a string of Teamster-financed casinos in Las Vegas. The conviction resulted from a four-month trial. A five-year investigation involved 4,000 hours of tape-recorded conversations in five states. (The Washington Post, 1/22/86.)
- A two-year New Jersey State Police investigation identified 90 of the 200 junket operators licensed to do business in Atlantic City as having associations with the Bonanno crime family. (The Clarion-Ledger, 8/30/85, 14A.)

The concerns about organized crime which I find most pressing are the following:

- Organized crime investigations are very time-consuming, expensive, and reach beyond the scope of a single geographical location.
- The highest level of expertise in law enforcement is essential for organized crime investigations. For me, the question about the possibility of controlling organized crime's involvement in an activity such as gambling is very problematic. But the only opportunity of doing so is with the most sophisticated, effective, experienced, seasoned law enforcement system existing.
- A partnership between federal and state law enforcement officials would appear to be the only way of some effective regulation of the gambling industry and efforts by organized crime to penetrate it.

- It appears to me implausible that local Indian governing bodies would be able to marshal the resources or the expertise to approximate the level of cooperative law enforcement that would be needed to deal with organized crime.

Unified Local Law Enforcement

I became greatly concerned about the regulation of gambling on Indian lands when I heard Congresswoman Vucanovich testify several years ago during earlier hearings on this same subject. I was stunned to hear her state that certain lands within the city limits of Las Vegas were owned by Indian tribes and, therefore, could possibly be the site of a casino which could not be regulated by either the state law enforcement officials or by gaming regulatory bodies.

Since that time I have visited the city of Las Vegas. It is a city which, by count in the Yellow pages, has over 60 different listings under the "Casino" heading. Such a pervasive presence requires the best law enforcement possible.

Consider the following hypothetical situations related to Las Vegas.

- An act of violence is committed by a person who crosses a street and enters a casino on Indian lands.
- Organized crime figures have found a way to skim proceeds at one casino and take those proceeds to a casino on Indian lands for laundering.
- Organized crime figures are using a casino on Indian lands as the base for racketeering operations directed at employees in

other casinos.

o Organized crime becomes involved in hidden ownership or skimming at a casino on Indian lands.

All of these hypothetical situations involve lands and activities clearly located within Las Vegas, but the authority of state law enforcement officials is negated without some grant of authority. The state of Nevada, having chosen to legalize gambling, would be limited in its ability to exercise the degree of regulaton and conrol needed to fulfill its mandate.

The problem of limitation on local law enforcement would not be limited to casino gambling. The same basic principle would be applicable in cases of pari-mutuel racing and jai alai. Problems associated with bookmaking, computer fraud, drugging, hidden ownership of both tracks and horses, etc., would all be matters with which state law enforcement officials would be hindered by the lack of authority.

One matter which I have not seen discussed is the possible complication that would result from the operation of some form of lottery on Indian lands. With lotteries now evolving into games involving extensive computer networks and with the future forms of lotteries involving video games and possibly credit card forms of play, what is to prevent the establishment of a separate lottery to be operated from Indian lands? Such a lottery could extend, in various ways, beyond those borders into the surrounding state. In fact, it is technologically possible that there might be a "nationwide" lottery operated collectively from

Indian lands, doing business in every state of the union.

I call your attention to an excerpt from a recent article about the effects of technology on the gambling industry.

> One of IGT's most recent products, Megabucks, was developed in response to the challenge from state lotteries. The concept was simple: a statewide network of progressive slot carousels linked together to produce huge, dramatic jackpots. In reality, it was a high tech, state of the science achievement.
>
> Each slot machine in the Megabucks network plays independently. A small computer in each machine monitors every coin played and communictes the information electronically to a central computer in Reno. The central computer keeps track of every Megabucks slot, maintains a constant tally of the jackpot and projects the ever-changing jackpot total back to all megabuck units where it is displayed on a large digital tote board.
>
> (Byron Liggett, "High Tech: Opportunity and Change for the Casino Industry," _Gambling Times_, Feb./March '87, p. 56.)

The prospects of such technology being used without any role whatsoever for state regulation is mind-boggling. At the present time, Indian-sponsored gambling occurs at about 120 different places with annual gross revenue of about $150 million. The application of new technology of the type described above to gambling on Indian lands would increase such activities and total revenues exponentially. Organized crime's infiltration and influence on such an expanded system are almost assured.

I am fully aware of the accusation that state regulation would dramatically disadvantage gambling on Indian lands by controlling the sizes of prizes, etc. From the perspective I represent, the question of self-interest of some sectors of the gambling industry which may be a part of this debate is irrelevant. If the activity is going to be legal, the citizens of a state are owed the most diligent effort at diligent regulation, not for the sake of encumbrance, but for the sake of providing the highest integrity possible.

The separation of Indian lands from some kind of orderly, regulatory scheme within the state would produce a regulatory nightmare.

Regional Socioeconomic Consequences

Regulation of gambling on Indian lands appears to be different dramatically from forms of self-regulation. The sovereignty issue as related to Indian lands involves the basic principle of self-regulation. It primarily involves the regulation of the activities of tribal members.

Legalized gambling is an activity which differs dramatically. It is an activity which, when conducted on Indian lands, has as its goal the attraction of non-residents onto the lands for the purpose of gambling. The vast majority of customers will be visitors to these lands.

Whatever consequences flow from gambling on Indian lands will be felt primarily away from those lands.

- If those activities contribute to growth in compulsive gambling, the impact will be felt most dramatically in the state within which the Indian lands are situated.
- If compulsive gamblers who practice their activity primarily on Indian lands commit crimes of property and of embezzlement to carry on their gambling, those crimes will be committed prmarily

in the state within which the Indian lands are located.

o If the gambling activities situated on Indian lands advertise their activities, whether honestly or deceptively, that will be done other than on Indian lands.

o If gambling on Indian lands has a predatory effect upon poor people, that effect will be felt primarily in the state surrounding the Indian lands.

Gambling on Indian lands is an activity which is interstate in the nature of its consequences. The nature of this activity is such that it cannot be effectively regulated by a separate system of regulation. In fact, rather than considering the possibility of fracturing the law enforcement related to gambling into a greater number of units, adding Indian tribal enforcement to the state and federal units, it is my opinion that Congress may in fact need to explore instead some form of regional regulation that would recognize the interstate nature of gambling. The consequences of gambling, especially when practiced on the boundaries between states, reaches across state lines. A more enlightened form of regulation would look in the direction of some regional regulation that extends, rather than supplants, state regulation.

The Coelho version of pending legislation appears to be essential in giving the states an appropriate authority for regulating an activity occuring within their borders. I therefore urge that this version of pending legislation be the form reported to the floor for passage.

SOUTHERN BAPTIST CONVENTION

St. Louis, Missouri

June 16-18, 1987

RESOLUTION ON GAMBLING

WHEREAS, The Southern Baptist Convention has spoken on numerous occasions about he harmful effects of gambling; and

WHEREAS, Many states are now allowing legal state lotteries; and

WHEREAS, Many states are now in the midst of a battle about state supported lotteries and a national lottery is being advocated by some; and

WHEREAS, Various forms of gambling have become commonplace on Indian lands and other forms of gambling, such as parimutuel racing, jai-alai, and casino, might in the future be established on Indian lands; and

WHEREAS, Federal law does not allow for any regulatory role on the part of states concerning Indian lands located therein.

Therefore, be it RESOLVED, That we, the messengers of the Southern Baptist Convention, meeting in St. Louis, Missouri, June 16-18, 1987, express our alarm and concern about the growth of legalized gambling and lottery in the nation and the attendant problems of organized crime, adequate regulation, compulsive gambling, and preying upon the poor; and

Be it further RESOLVED, That we declare our strong conviction that in those state having legalized gambling, state government has the responsibility of providing the most effective regulation possible; and

Be it finally RESOLVED, That we call upon Congress to enact legislation currently pending which would guarantee the right of state governments to regulate gambling activity occurring within their boundaries including Indian lands.

Adopted by the Southern Baptist Convention
June 16-18, 1987, St. Louis, Missouri

Harold C. Bennett

Harold C. Bennett, President and Treasurer
Executive Committee of the Southern Baptist Convention

PREPARED STATEMENT OF NORMAN CROOKS, MEMBER, SHAKOPEE MDEWAKANTON SIOUX COMMUNITY OF MINNESOTA

Mr. Chairman, and members of the Committee. My name is Norman Crooks, I am a member of the Shakopee Mdewakanton Sioux Community of Minnesota. I own and operate a private game on the Shakopee Reservation, under the authority and consent of the Shakopee Mdewakanton Sioux Community. Pursuant to its sovereign authority, the Community authorizes the license of privately operated games which are not prohibited by federal law, or otherwise criminally prohibited by state law, in return for the payment of a licensing fee by the operator.

I have, in reliance upon the authority of the Community, invested a substantial amount of time, effort, and capital into my gaming operation. Enactment of the proposed Indian Gaming Regulatory Act would take from Indian tribes their sovereign right to authorize private games within their jurisdiction, and consequently would destroy my investment. I believe the bill to be both unfair to private enterprise, and unnecessary in light of current federal law upholding the right of tribes to conduct qualified gaming in Indian country. These are reasons why I felt compelled to present my testimony before this Committee, to urge that the proposed Indian gaming bill not be enacted into law.

Indian tribes have the sovereign authority and capability to regulate gaming activities within their own territory. Federal courts have held that Indian gaming which is civil/regulatory in nature and otherwise not prohibited by federal law is permissible and not subject to the regulatory jurisdiction of states. Consequently, federal Indian gaming legislation to protect against the assertion of state regulatory jurisdiction is unnecessary at this stage. Moreover, the unduly restrictive provisions of the proposed Act go too far in compromising the regulatory freedom of tribes. In particular, all current versions of the proposed Act would prohibit tribes from licensing privately operated gaming. Not only does this provision divest tribes of important regulatory freedom coextensive with their sovereignty over their territory, it would also unjustifiably deprive tribal licensees who are currently operating under the authority of the tribal government of the fruits of a substantial amount of time, labor, and investment. Such a deprivation of one's property rights are to me, both unfair and contrary to fundamental Constitutional due process principles which guide this nation.

I certainly recognize the concerns expressed about preventing the infiltration of organized crime in Indian gaming. However, the restrictions of the proposed Act go beyond simply implementing measures to prevent the infiltration of organized crime, but unduly burden the decision making authority and regulatory freedom of Indian tribes. In this context, the proposed Act assumes that tribes are unable to regulate Indian gaming themselves. The undue restriction upon the·tribes' own decision making authority is in itself an insult to Congress' own policy of promoting tribal self-government.

Moreover, there has been no showing that tribal governments in general, with the relevant supervision of the Secretary of the Interior, have allowed their gaming to become so infested with organized crime as to require a federal regulatory Act. In reality, the many successful Indian gaming operations today stand as an example of the ability and integrity of Indian tribes in conducting qualified gaming activities. This illustrates the ability of Tribes to self-regulate gaming activity in their jurisdiction both honestly and fairly, and free of the corrupt influences referred to in the proposed Act.

As an American Indian who fully supports the federal policies to promote tribal self-government, self-sufficiency and economic development, I cannot support legislation which would so unnecessarily restrict the sovereignty of Indian Tribes over their own territory. In light of the Cabazon precedent which settles the issue of state regulatory jurisdiction over Indian gaming, there is no need for federal legislation, especially legislation so restrictive as that now proposed. I therefore urge the Committee not to enact the proposed Indian Gaming Regulatory Act.

I thank the Committee for their attention, and hope that they seriously consider my comments on this issue. Thank you very much.

Norman M Crooks

Norman Crooks
Owner and Operator
Individual Ga[illegible]g

PREPARED STATEMENT OF HON. THOMAS A. DASCHLE, U.S. SENATOR FROM SOUTH DAKOTA

In recent years, Indian bingo has created substantial economic benefits for Indian tribes all across the country. For many tribes, bingo is an economic success story, and has provided employment, housing, medical and educational facilities.

However, it must be remembered that Indian bingo began in an atmosphere of uncertainty and faced extensive legal challenges all the way up to the Supreme Court. These risks were shared by private companies who were willing to manage the bingo facilities on behalf of the Indian tribes and to invest substantial economic resources in a risky, untried business. Several of these management companies entered into contracts with Indian tribes that were duly approved by the Secretary of the Interior.

Under the pending gaming legislation, some means to assure equitable and fair treatment of those agreements existing prior to the Act should be developed. Some acknowledgement needs to be given those management companies who have already undergone some review and approval process. There is some justification for special consideration of these pre-existing agreements that should not be ignored.

To give those previously approved contracts a fair hearing also sends a strong signal to companies willing to invest in tribal enterprises.

A review of management contracts approved by the Secretary of the Interior shows that some contracts are reasonable and do not place an undue burden upon Indian tribes. Some Indian tribes may wish to continue their management contracts, and support their management companies. Therefore, these contracts should be reviewed in a special category.

In conclusion, while I support the basic premise that all management agreements should be reviewed against provisions of the legislation and I would be opposed to outwardly grandfathering all agreements entered into prior to this legislation, I do favor a timely review and some provision for special consideration of pre-existing agreements.

PREPARED
STATEMENT OF MATHEW DICK, Jr.
MEMBER, COLVILLE BUSINESS COUNCIL
COLVILLE CONFEDERATED TRIBES

Mr. Chairman, I am Mathew Dick, a member of the Colville Business Council of the Colville Confederated Tribes. I would like to thank you and the Committee on behalf of the Colville Confederated Tribes for this opportunity to present testimony on the Indian gaming bill. This legislation reaffirms the concept of the right of the Indian people in the United States to self-government and is in line with the President's policy of self-determination.

The Colville Confederated Tribes is in full agreement that there is a need for Federal standards on Indian gaming and further agrees that there is a need to establish a National Indian Gaming Commission in order to protect this type of economic development as a means of generating needed tribal revenue.

While we support the main thrust of the proposed bill, we recognize that each and every tribe is distinct and unique. In order to insure that each tribe retains the right to self-government and self-determination we recommend that the National Indian Gaming Commission be established in the following manner:

1) each tribe would adopt a gambling ordinance that would provide for a gaming commission for their

tribe;

2) the tribes with similar forms of traditional gaming would form Regional Gaming Commissions;

3) the Regional Gaming Commissions would then combine to form a National Indian Gaming Commission that would provide regulatory standards for each tribe, provided that such regulations would not intrude on the powers of self-government of any tribe;

4) the Secretary of the Interior would be required to review the proposed regulatory standards and consult with each tribe, if necessary, on the traditional forms of gaming;

5) the National Indian Gaming Commission would have as many members as there are Regional Gaming Commissions; and,

6) the executive board of the National Indian Gaming Commission would be made up of its own members, with powers and authorities approved by all members.

In conclusion Mr. Chairman, the Colville Confederated Tribes feel as you do, I'm sure, that any legislation designed to regulate Indian gaming must recognize and protect the right of Indian tribes to self-government and self-determination.

FALLON PAIUTE-SHOSHONE TRIBES

8955 Mission Road
P.O. Box 1650
Fallon, Nevada 89406
(702) 423-6075

PREPARED
STATEMENT OF THE FALLON PAIUTE-SHOSHONE TRIBES BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS ON S. 555 AND S. 1303

REGARDING THE REGULATION OF GAMING ON INDIAN LANDS

INTRODUCTION

The Fallon Paiute-Shoshone Tribe submits the following statements in opposition to the enactment of S. 555, S. 1303, H.R. 2507, and H.R. 964, especially those portions of the proposed bills that authorize the States to control and/or regulate Indian gaming. It is the Fallon Paiute-Shoshone Tribe's position that the regulation of gaming within the reservation is part of the inherent sovereign rights of self-government, as defined by the U.S. Supreme Court and other case law.

It is also our position that affected Tribes be allowed to consent to any imposition of gaming enforcement or regulation as each Tribes' needs dictate. Some Tribes have the sophisticated resources to regulate gaming by themselves, while other Tribes may require some type of federal assistance. It should be at the Tribes' discretion to request such assistance.

DISCUSSION

We call your attention to the recent Supreme Court decision reaffirming Tribal government regulatory rights (California v. Cabazon Band of Mission Indians, Feb. 1987) and to the National Indian Policy Statement of 1983, which also reaffirmed Tribal rights to self-government. Congress saw fit to enact the Self-Determination and Education Assistance Act allowing Tribes to take on more responsiblity in handling their own affairs. To enact the present legislaltion would, in effect, reverse the policies of the last fifteen years in Indian affairs.

Tribal governments have taken to heart the government-to-government relationship as advocated by the Administration and have sought to establish responsible and viable governmental entities. But it seems that everytime Tribes establish businesses or develop income-generating enterprises, the government steps in or halts Tribal progress. Federal and/or State bureaucratic interference over Indian gaming will have a negative effect on any economic gaming venture that may be started by reservations in Nevada.

The solution to the alleged problems faced by Tribal Governments in regulating gaming, i.e., infiltration by organized crime, is to strengthen Tribal governments, not by imposing federal and state bureaucratic control over Tribes. By strengthening Tribal governments, Congress would show tangible proof of their desire to show recognition of Tribal Governments as self-governing entities. In fact, Congress has already passed laws to do so through the Self-Determination and Education Assistance Act, as amended, P.L. 93-638. Opposing the current Indian gaming bills, as they are now written, would be a reaffirmation of the Self-Determination Act and federal policy of dealing with Tribes on a government-to-government basis.

We request that you oppose the Indian gaming bills as proposed, until they reflect or reaffirm the Tribes' right to self-government.

PREPARED
STATEMENT OF

STANLEY G. JONES, SR., CHAIRMAN
TULALIP TRIBES OF WASHINGTON

ON

S.555 and S.1303
(THE INDIAN GAMING REGULATORY ACT)

BEFORE

THE SELECT COMMITTEE ON INDIAN AFFAIRS
U.S. SENATE

JULY 13, 1987

On behalf of the Tulalip Tribes, I appreciate the opportunity to present our views and recommendations with respect to the pending measures.

Although we have consistently supported the enactment of constructive Indian gaming legislation in prior Congresses, we wish to emphasize that our current position has been influenced by the favorable U.S. Supreme Court Opinion handed down on February 25, 1987, in California et al. v. Cabazon Band of Mission Indians, et al. That opinion upheld the rights of tribes to operate gaming where such gaming is not criminally prohibited by state law, free from any state control.

With the Cabazon decision firmly in mind, we have adopted the position that we could support only legislation that does not impose any form of state jurisdiction over Indian gaming. This is particularly so with respect to Class III gaming that we believe should be licensed and regulated by the federal Commission contemplated in the two pending bills.

Therefore, we support enactment of S.1303 since it conforms to our strongly-held views on the form of jurisdiction that should be applicable to Class III gaming.

Initially, we had hoped that the favorable Cabazon decision would have laid to rest the need for enactment of Indian gaming legislation; however, upon sober reflection and study, we concluded there were overriding reasons why such legislation should be enacted. First, the non-Indian gambling establishment together with the anti-tribal sovereignty forces continue to oppose the right of Indian tribes to engage in legitimate forms of gaming as revenue-generating vehicles. Second, the Administration, who should be playing a leading role in protecting our sovereign right to license, operate and regulate Indian gaming, seems more determined to amend the pending bills in a manner that would limit our income in Class II gaming and impose state jurisdiction over Class III gaming. For these reasons, and as a practical matter, we support enactment of Indian gaming legislation that upholds the sovereign rights of Indian tribes and that does not impose any semblance of state jurisdiction over Indian gaming activities.

Since the majority of Indian tribes are prepared to support enactment of positive Indian gaming legislation, notwithstanding the strength of our inherent sovereign powers, the tribes must look to the Congress to formulate a fair and equitable national Indian gaming policy that recognizes and upholds such sovereign powers. Since the Congress serves as the legislative arm of the Federal Government and has a trust obligation to Indian tribes, the enactment of positive Indian gaming legislation would clearly be within its powers and would represent fulfillment of that trust obligation.

In our view, the positive goals that could be achieved in Indian gaming legislation were clearly articulated in the National Indian Gaming Association's April 5, 1987 communication to Chairman Inouye, Senate Select Committee on Indian Affairs:

> Legislation at this juncture, however could still achieve desirable results. Legislation could codify the federal posture that gaming is a legitimate aspect of the federal commitment to promote Indian self-determination and economic self-sufficiency. Legislation could provide a system and standards for regulating management contracts, as well as provide for uniform national standards for Executive Branch action with respect to gaming. Well crafted legislation could also insulate tribal gaming from what we expect will be a new onslaught of challenges from states, as well as challenges from some quarters of the Department of Justice.

Specifically, the Tulalip Tribes were pleased to note that sponsors of S.1303 included our "self-regulatory" concept in the bill. That concept is embodied in section 11(e) and provides tribes that own and operate Class II gaming facilities, upon meeting designated standards, an opportunity to exercise a higher level of self-regulation over their gaming facilities and activities. We urge the Committee to approve this provision.

The Tulalip Tribes join other tribes in expressing disappointment over the Administration's recent testimony before the Committee in which they continued to characterize Indian gaming as an unregulated activity. Such characterization totally rejects the concept of tribal sovereignty and the fact that many tribes own, operate and indeed regulate gaming activities, primarily bingo, for the benefit of their members and the patrons of such gaming activities.

Moreover, the Administration has belatedly conceded that gaming represents a viable economic development endeavor on many Indian reservations. We are satisfied that the tribal leadership across the country views gaming as one alternative for economic development and not as an end in itself. Significantly, the Bureau of Indian Affairs reported in its INDIAN NEWS, July 13, 1987, that 113 Indian tribes are engaged in high stakes bingo games and gross an estimated $255 million a year. These earnings translate into substantial net profits for gaming tribes, employment for deserving Indian people and substantial payrolls that are spent primarily in non-Indian communities. The Tulalip Tribes' successful bingo game generates income that is a part of this positive national Indian gaming picture. Our gaming earnings, including bingo and pulltab sales, are already a part of this Committee's extensive hearing record. Therefore, we shall refrain from reporting further on that aspect in this statement.

What we wish to emphasize is that legitimate gaming activities serve as a major revenue stream for many tribes. Such activities must not only be preserved, but enhanced, where possible, to benefit participating tribes. In the final analysis, we are looking to the Congress to enact the type of Indian gaming legislation that will accomplish these desirable results. To do so will foster the concept of Indian self-determination and permit tribes to pursue a course of action leading to self-sufficiency.

We have directed our legal counsel, gaming director and legislative consultant to work closely with the Committee staff to promote detailed changes to the bill that we believe will improve its effectiveness.

PREPARED STATEMENT OF ANDREW P. MILLER ON BEHALF OF THE AMERICAN GREYHOUND TRACK OPERATORS ASSOCIATION

My name is Andrew P. Miller. I am counsel for the American Greyhound Track Operators Association ("AGTOA"). It is a pleasure for me to submit to this Committee AGTOA's position on pending legislation to regulate gambling on Indian reservations.

AGTOA is a non-profit corporation which was formed in April 1946. Its membership consists of the owners and operators of forty-five Greyhound racetracks located throughout the United States. Membership is open to all lawfully licensed Greyhound tracks whether they be owned by individuals, partnerships or corporations.

Last year, the Select Committee on Indian Affairs debated the issue of gambling on Indian lands, but procedural problems prevented the full Senate from acting on a compromise proposal before the end of the 99th Congress.

AGTOA was deeply involved in this debate during the last Congress. After the Select Committee narrowly reported out legislation (H.R. 1920) in September of 1986, then Chairman Andrews announced that a further compromise would be sought before bringing a bill to the full Senate. In an effort to produce such a compromise that would protect both the rights of the tribes, the interests of the gaming industry and the legitimate concerns of the States concerning control of gambling within their borders, we worked with both the Senate and House staff, tribal representatives and State officials to produce a compromise for full Senate consideration last fall. This compromise represented a consensus position among most groups, and likely would have been adopted by the full Senate and accepted by the House but for certain procedural obstacles that prevented its consideration in the waning days of the 99th Congress.

At the beginning of this year, we continued to work with parties in interest to refine the compromise further in order to produce a bill which could receive the widest possible support. This consensus-building process was completed in late January, 1987 and is embodied in legislation introduced both by you, Mr. Chairman, (S. 555) and by Congressman Coelho (H.R. 964). Like all true compromise efforts, neither the tribes nor AGTOA and other gaming industry interests nor the States achieved one-hundred percent of what they were seeking. Nevertheless, at the time of introduction the bills were acceptable to all parties which participated in the negotiations.

Efforts to pass these bills and solve the problems inherent in unregulated gaming on Indian lands were, of course, delayed as a result of the Supreme Court's decision in the Cabazon case which was handed down on February 25, 1987. The Cabazon case, in a nutshell, stands for the proposition that absent legislation from Congress State control over bingo and card games on Indian lands is not possible. This general proposition is, however, fraught with numerous potential exceptions and caveats that make the prospect of further litigation, absent Congressional action, almost certain.

During the past Congress, the specter of a Supreme Court decision on Indian gaming was ironically both an impediment as well as a spur to Congressional action. Among some groups, there was a view -- misguided in our opinion -- that the Supreme Court would "solve" the issue of Indian gaming once and for all. This view was shared both by some Indian tribes who advocated no federal legislation on this subject as well as by others who were totally opposed to any form of Indian gaming and who blocked any reasonable legislation in the 99th Congress.

AGTOA has never believed that the Supreme Court in Cabazon would settle the issue of Indian gaming. From the inception of debate in the 99th Congress, we have consistently advocated the need for responsible legislation to address the serious questions of tribal rights, state control and the protection of the integrity of the gaming industry. It was this desire for balanced legislation which led us to participate in negotiations with the parties in interest last year and early this year, and it remains our position today.

Now that the Cabazon decision has been handed down and sufficient time has elapsed to review that decision, we urge Congress to adopt the compromise approach embodied in S. 555. We believe this bill represents an appropriate balance between tribal sovereignty and State jurisdiction. Its objective is to provide economic development for the tribes while deterring the influence of organized crime through strict State control of high stakes gaming. For the long-term good of all interested parties, the Indians, the States and the gaming industry, Congress must act definitively on this issue now.

Until Congress passes legislation, the ability of organized crime to infiltrate games on Indian lands is enhanced with each passing day. It is Congress' duty to protect the citizens of the States, both Indian and non-Indian, in which these games are played from unscrupulous elements of society who would otherwise prey on unregulated gaming enterprises in Indian country. AGTOA strongly believes that S.555 is the best vehicle to insure safe, fair and honest gaming on Indian lands.

The legitimate concerns of Congress on the need to place reasonable controls over unregulated Indian gaming have _not_ diminished as a result of the _Cabazon_ decision. Indeed, Congress should have more concern that this decision will accelerate the plunging of tribes into the uncharted waters of high-stakes gaming as unscrupulous promoters sing the siren song of potential wealth. While Indian bingo has been a source of revenue for certain tribes, Congress correctly was concerned last year about the expansion of unregulated gaming into the much more complex areas of parimutuels and casino gaming. The _Cabazon_ decision did nothing to alleviate this concern.

Lest there be any doubt about the right of Congress to impose controls over unregulated gaming on Indian lands, the Supreme Court acknowledged such a role in the Cabazon case when the Court stated:

> "It is clear, however, that state laws may be applied to tribal Indians on their reservations if Congress has expressly so provided."

And also:

> "[t]he Federal Government has the authority to forbid Indian gambling enterprises."

AGTOA does not seek to forbid Indian gaming. Indeed, we argue that the issue is not about gaming among Indians. Instead, the issue is regulating games on Indian lands which attract almost entirely non-Indians, thus avoiding State law and regulations which would otherwise apply to non-Indian gamblers. There is no reason why State law should be avoided by these non-Indians solely because they step across a reservation boundary. We oppose the short-run financial reward of engaging "management contractors" for unregulated Indian games run for the benefit of non-Indians who use the reservation lands as a enclave to escape State control that would otherwise apply if such activities were held on non-Indian lands. In the long-run, we fear that such unregulated activity will only bring scandal and disrepute to the Greyhound racing industry whose reputation we have sought to protect over the years.

Instead, we believe that the compromise embodied in S. 555 represents the best approach to the problem. Your bill, Mr. Chairman, allows Indian bingo to continue without change, thus protecting present and future games. In the area of "hard-core" gaming such as parimutuels and casino gaming, however, S. 555 insists that, if the tribes wish to engage in such activity, it come under the control of States with a wealth of experience in regulating such complex games.

States already have the mechanisms in place to regulate high-stakes gaming. They know how animals can be drugged, games are tampered with and corruption can seep in. While State regulatory systems may not always be perfect, allowing a separate and unequal system of Indian games to sprout up will only compound the difficulties of maintaining the integrity of the gaming industry.

Non-Indian games are obviously profitable. The tribes do not need to avoid State regulation to make money but, without State regulation, all the promise of riches may well vanish in scandal. In providing for State control over "hard-core" gambling, S. 555 is sensitive to the principle of Indian sovereignty and goes to great lengths to insure that, unless and until the tribes wish to engage in such gaming, they need not assent to State control. Finally, the compromise protects the tribes from unfair discrimination by a State that would violate the equal protection clause of the Constitution.

In short, S.555 is a true compromise. AGTOA is not entirely happy with its provisions and neither are the tribes. While some tribes which supported the compromise earlier this year believe that the Cabazon decision has changed the political landscape and that legislation is no longer necessary, AGTOA believes that Congress must look beyond parochial interests on this issue and act to balance the competing rights, duties and responsibilities of the tribes, the gaming industry and the States. In doing so, there is no way to make all parties completely happy, but there is a way to insure that all parties are protected and that the public interest is served. AGTOA urges the Committee to act favorably on S. 555.

Mr. Chairman, we applaud your efforts to examine this issue thoroughly. We particularly support the proposal to allow tribal members to vote by referendum on whether or not their tribe should enter into bingo or other forms of gaming. AGTOA also shares your concern regarding tribal size limitations.

Finally, Mr. Chairman, we thank you for the opportunity to share AGTOA'S views with the Committee. We hope you will move expeditiously on legislation and look forward to working with you, your staff and other Members of the Committee.

Thank you.

PREPARED STATEMENT OF CHARLES H. MORIN, FORMER CHAIRMAN, COMMISSION ON THE REVIEW OF THE NATIONAL POLICY TOWARD GAMBLING

I am Charles H. Morin, Chairman from 1972 to 1976 of the Commission on the Review of the National Policy Toward Gambling. The "National Gambling Commission" (as it was familiarly called) was created by the Organized Crime Control Act of 1970, and was the first full-scale Congressional action to scrutinize wagering activities in the United States and to formulate recommendations for the States and the Federal Government to consider as they proceeded to cope with the emerging problems of widespread gambling.

This bipartisan Commission comprised fifteen members -- four each from the House and Senate, and seven from the public sector. As one of the public members, I was named Chairman by the President; other public members included the Attorney General of Nevada, the Chairman of the New York State Racing Commission, a Professor of Economics, a prosecuting attorney from New Jersey, the Executive Director of the National Legal Data Center and a City Councilwoman from Philadelphia. The Congressional membership changed somewhat from year to year, but prominently participating for the entire life of the Commission were Senators McLellan, Cannon and Taft. I am pleased at this time to present to your Committee for its record the Report of the Commission as submitted to the President and Congress, entitled Gambling in America.

The Commission held a total of 43 days of public hearings throughout the country, receiving testimony from 275 Federal and State law enforcement officials and policymakers, individuals involved in every phase of legal and illegal gambling, and concerned and informed citizens who reflected how their communities felt about gambling. We also retained the highly acclaimed Survey Research Center of the University of Michigan to conduct a detailed survey of American gambling habits and attitudes. The methodology and results of this historic survey are contained in Chapter 4 of Gambling in America and is indeed most interesting.

In most ways, the final Report of the Gambling Commission is even more relevant today that it was ten years ago when it was first submitted. Legalized gambling has grown from a somewhat daring local experiment into more or less everyday big business. I say more or less because legal gambling can never be treated in exactly the same way as other economic enterprises. Legal gambling brings with it certain unique "baggage" -- and by that I mean the huge amounts of money that change hands, the potential for corruption, the enevitable social cost and what has proved to be a concomitant increase in illegal gambling and crime wherever certain types of legal gambling operate.

I point out these facts not to frighten, nor to urge the abolition of legal wagering. Gambling -- legal and illegal -- has always been and is still an entrenched fact of life in American society. Rather, I point out these facts to urge upon you a recognition that certain problems do exist with legal gambling -- but also that those problems can be largely controlled. We need only look to States such as Nevada and New Jersey where stringent State regulation has ensured both the general success and the integrity of the games of chance those States offer.

Any entity contemplating the institution of legal gambling would do well to emulate successful past practice: what is needed is, first, a clear-eyed assessment of the crime control and law enforcement aspects of legal gambling, followed by well-thought-out policies, effective regulatory activities and trained regulatory personnel. I feel justified in warning you, however, that this is not an easy assignment; on the other hand, it is possible with determination and great care.

This Select Committee is in the process of developing a national policy toward legalized wagering on Indian lands. It is not too much to hope that you will view reservation gambling not merely as a matter of Indian rights, not merely as a revenue-raising device, but as the multifaceted, complicated phenomenon that it is. And that must include a recognition of the need for pervasive expert regulation of the activities and the personnel conducting them, with a recognition that the effects of any such activity are going to be felt far beyond the borders of the reservations within which the activities are conducted.

I believe that the enclosed final Report of the Commission on the Review of the National Policy Toward Gambling will provide you with a wealth of necessary information as you go about your difficult task. It is unbiased, it is factual, it is still pertinent, and I commend it to your attention.

PREPARED STATEMENT OF HON. CLAIBORNE PELL, U.S. SENATOR FROM RHODE ISLAND

Mr. Chairman, thank you for this chance to address the provisions of S. 555 and S. 1303, bills to provide for federal regulation of gaming on Indian lands.

I want to make sure that the provisions of these bills do not abrogate the terms of the Rhode Island Indian Claims Settlement Act (P.L. 95-395) and that they reaffirm that the Government of the State of Rhode Island will continue to regulate all legalized gaming activities within Rhode Island.

At the close of my remarks, I will propose an amendment for your consideration that would accomplish this goal. First, however, I would like to explain why Rhode Island must be considered as a special case with special concerns.

As the principal architect of the precedent-setting Rhode Island Indian Claims Settlement Act, I know that the intent of this settlement law was to preserve the full jurisdiction of the State of Rhode Island. We should make certain that this remains the case.

The question of high-stakes bingo or other high-stakes gaming has proven to be a divisive one in Rhode Island. Despite repeated assurances to the contrary, many Rhode Islanders remain convinced that such gaming activities remain an option for the Narragansett Indian Tribe.

This issue has moved Rhode Island's Governor, as well as tribal and community leaders, to contact me and other members of the Rhode Island Congressional delegation to urge us to make sure that such gaming activities are not permitted.

Our concern is so great that my colleague, the junior Senator from Rhode Island (Mr. Chafee), and I, joined by Representative Claudine Schneider, wrote to Interior Secretary Donald P. Hodel last year.

In that letter, we said:

"The Narragansett Indian Tribe has acquired 1,800 acres of land in the town of Charlestown, Rhode Island as part of a settlement with the federal government and the State of Rhode Island, and has sought to obtain federal trust status for the land.

"A number of questions have arisen due to reports about the possible establishment of a high stakes bingo or other gambling operation on the settlement land or on other lands acquired by the tribe.

"We do not believe that a gambling enterprise should be established in Charlestown over the objections of town officials, who are concerned that the town's ability to regulate such activities in the future could be jeopardized under the terms of the trust arrangement.

"We ask that you look into the matter and indicate how the granting of trust status will affect local and state jurisdiction over gambling activities on the settlement parcels and other lands acquired by the tribe."

The response that we received stated:

> "Concerning the granting of trust status and how it will affect state and local jurisdiction over gaming activities on settlement land, the Bureau has consistently advised the Narragansett Tribe that the Rhode Island Land Claims Settlement Act confers criminal and civil jurisdiction on the state which would preclude any gaming activities not in accord with State laws on the tribe's settlement lands.
>
> "Further, the Bureau has rejected, at both the Eastern Area and Central Office levels, a tribal attempt to acquire land in trust adjacent to the Settlement Lands for the purpose of establishing a Bingo enterprise....It is our current understanding that the newly-elected tribal officials are opposed to gaming or other activities that are not consistent with state laws."

We have written and sent a follow-up letter to Secretary Hodel asking "for a more precise explanation of what effect trust or reservation status would have on the criminal and civil jurisdiction" of the State of Rhode Island and the Town of Charlestown. That question has not yet been answered.

Last year, I also received a letter from the Honorable Edward D. DiPrete, Governor of the State of Rhode Island, expressing his deep concern about regulation of gaming on Indian lands within Rhode Island.

Governor DiPrete's letter stated:

> "I believe that unchecked gambling, under any conditions, would dramatically affect the high quality of life that we have all worked so hard to obtain for the citizens of Rhode Island.
>
> "Therefore, I would urge you to offer an amendment to the legislation so as to ensure that any form of gambling, which is contrary to state or local law, be specifically prohibited on Indian controlled land located within a legal jurisdiction.
>
> "In Rhode Island, this would mean that the Narragansett Indian tribe would be barred from offering high-stakes bingo. I am sure that you share my views that such a prohibition would be in the best interest of all Rhode Islanders."

In addition, years of costly litigation might result from a conflict between a change in federal regulations governing gaming and a consent judgement signed by the State of Rhode Island, the Narragansett Indian Tribe and the Town of Charlestown in the late 1970's. That agreement allows input prior to any activity on the Indian reservation.

It should be apparent that Rhode Island is and should be considered a special case within the provisions of any federal regulation of gaming on Indian lands.

We have worked long an hard to gain federal recognition for the Narragansett Indian Tribe. This work involved hammering out agreements at all levels of government. Bills like S. 555 and S. 1303 have the potential of upsetting the carefully crafted balance created by the Rhode Island Indian Land Claims Settlement and subsequent contractual agreements.

Mr. Chairman, I urge you and the members of the Select Committee on Indian Affairs to amend these measures to protect the special case of Rhode Island. We must assure that both the spirit and the letter of our agreements remain unimpaired.

During the 99th Congress, the Select Committee on Indian Affairs agreed to accept an amendment I was prepared to offer to the Indian Gaming Regulatory Act. That amendment states:

> Nothing in this Act may be construed to permit gaming activities, except to the extent permitted under the laws of the State of Rhode Island, on lands acquired by the Narragansett Indian Tribe under the Rhode Island Indian Claims Settlement Act (P.L. 95-395), or on any lands held by or on behalf of such tribe.

If this same amendment is made part of any legislation to regulate the conduct of gaming activities on Indian lands, I believe our special case in Rhode Island will be protected and both the spirit and the letter of our agreements will remain unimpaired.

Thank you again for the chance to alert the Select Committee on Indian Affairs to Rhode Island's special concerns.

PREPARED STATEMENT OF PURCELL POWLESS, CHAIRMAN ONEIDA TRIBE OF INDIANS OF WISCONSIN

The Oneida Tribe of Indians of Wisconsin hereby states its position and concerns regarding the proposed legislation now pending in this Committee. As it has in previous testimony on the same subject before the last two Congress', the Oneida Tribe clearly supports the need for federal legislation that will end the confusion that has existed regarding the relative governmental interests of tribes, states and the federal government.

The situation has been alleviated to some extent by the decision of the United States Supreme Court in the case of California v. Cabazon. The decision delivered in February of this year emphatically upheld the right of recognized Indian tribes to regulate gaming on their reservations free of state interference. The decision also reaffirmed the goals of encouraging tribal self-sufficiency and economic development. Cabazon was received by Indians with anticipation and relief. However, it is the belief of the Oneida Tribe that federal legislation is necessary to protect the right of tribes to continue to regulate and operate gaming enterprises on their own lands free of all outside intrusions.

The Oneida Tribe supports the findings and provisions of S.555 with respect to the general intent of the bill. However, it is our considered opinion that legislation must be revised or clarified in the following:

1. Approval of ordinances or resolutions, if not required by a tribe's constitution, is an unnecessary intrusion on the law making powers of the tribal government. The provisions of the proposed regulatory schemes would govern the activity as well without this

approval power. If it is included, as drafted, the power to approve gaming ordinances would diminish the right of tribal governments to make and enforce their own laws and to be governed by their own organic law.

A less burdensome and more logical means of achieving the same goal would be to require review and disapproval for cause inconsistent with the provisions of the law.

2. The requirement of annual independent audits for gaming enterprises ignores the fact that some tribes, such as the Oneida, own and operate their own enterprises exclusively and use the One Audit requirement of OMB, Circular A-128, which includes all tribal enterprises. As drafted, a separate independent audit requirement would be costly, duplicative and unnecessary unless there has been established indication of the need for such an audit.

3. The assessment formulas suggested by the bills are unrealistic. The Oneida Tribe believes that a fixed schedule based upon seating capacity, number of occasions, or other such indicia would be more fair and meet the necessary objective of supporting the regulatory body.

4. Classifications of gaming should reflect the findings of Cabazon, in that any gaming activity civilly/ regulated by the state can also be civilly regulated by the tribe consistent with provisions of the act. As drafted, the present legislation does not adequately address or reflect the full scope or tribal rights recognized by the United States Supreme Court in Cabazon.

CONCLUSION

For the facts and reasons set forth above, the Oneida Tribe of Indians of Wisconsin, supports the need for federal legislation in the area of tribal gaming regulation. Such legislation should recognize the sovereign governmental rights of Indians and not interfere or intrude unnecessarily where tribes, such as Oneida, have demonstrated by their success the ability and determination to be self-reliant and self-determining. Attached you will find information showing the financial success of the Oneida Tribe and the uses to which the gaming revenues have been put, as well as recognition and support of federal and state officials.

ONEIDA BINGO
FACT SHEET
ONEIDA TRIBE OF INDIANS OF WISCONSIN - March 1987

NAME OF OPERATION: Oneida Bingo
LOCATION: 2110 Airport Drive, Green Bay, WI 54303 (Across from Green Bay's Austin Straubel Airport)
PHONE NUMBER: (414) 497-8118, WI Watts 1-800-472-4263
ONEIDA BINGO MANAGERS: Sandra Ninham, Alma Webster
DATE OF ORIGINATION: October 1976

1976: NUMBER OF BINGO EMPLOYEES 10	1987 BINGO EMPLOYMENT: 110
FIRST YEAR'S ATTENDANCE: 8,000	1986 ATTENDANCE: 441,827
1976 TRIBAL BUDGET: $2,400,000	1987 TRIBAL BUDGET: $42,000,000
1976 TRIBAL EMPLOYMENT: 150	1987 TRIBAL EMPLOYMENT: 544
1976 UNEMPLOYMENT RATE: 40.1%	1987 UNEMPLOYMENT RATE: Tribal - 23.7% Brown Co. - 6.4% Outagamie Co. - 5.8%

1976 TRIBAL RESERVATION POPULATION: 1,802 BROWN/OUTAGAMIE CO. 2,472
1986 TRIBAL RESERVATION POPULATION: 2,033 BROWN/OUTAGAMIE CO. 4,481

1986 ESTIMATE OF BINGO'S ECONOMIC IMPACT ON TRIBE: $55,000,000
RECIPIENT OF BINGO INCOME: Oneida Tribal Programs

1976 TRIBAL ECONOMIC IMPACT ON AREA: $7,200,000
1986 TRIBAL ECONOMIC IMPACT ON AREA: $100-Million - $170-Million

THE FOLLOWING PROGRAMS ARE PRESENTLY FUNCTIONING BECAUSE OF BINGO REVENUES NOT AVAILABLE IN 1976 (all are at least partially funded by Bingo Revenues)

- Oneida 50 Bed Nursing Home (Serving Indian & Non-Indian)
- Oneida Health Care Center & Pharmacy (Serving Indian & Non-Indian)
- Oneida Day Care Center (Serving Indian & Non-Indian)
- Oneida Civic (Recreation) Center (Serving Indian & Non-Indian)
- Oneida Senior (Recreation) Center (Serving Indian & Non-Indian)
- Oneida Housing Authority (264 units) (Serving Indian & Non-Indian)
- Domestic Abuse (Serving Indian & Non-Indian)
- Alcohol and other Drug Abuse Prevention & Treatment (Serving Indian & Non-Indian)
- TRAILS Youth Program (Serving Indian & Non-Indian)
- USDA — Food Distribution (Serving Indian & Non-Indian)
- Income Maintenance (Serving Indian & Non-Indian)
- Community Library (Serving Indian & Non-Indian)
- Oneida Rodeway Inn
- OneidaTransit Authority
- Oneida Maintenance Garage
- Iroquois Gifts
- Redstone Center & Other Elder Housing
- Conservation
- Oneida Nation Museum
- Oneida Printing Enterprise
- Oneida One Stop (Grocery/Gas Station)
- Oneida Industrial Park

NORBERT HILL CENTER HOUSES THE FOLLOWING:

- Oneida Head Start Program
- Oneida Tribal School
- Economic Development
- Higher Education Program
- Job Training
- Home Improvement Coordinator
- Food Service
- Enrollment
- Cannery
- Day Care
- Planning
- Accounting
- Public Safety
- Administration
- Business Committee
- Public Relations
- Communications
- Law Offices
- Law Library
- Computer Center
- Fitness Center

EXPENDITURES: Money earned by Tribal members is almost entirely spent off of the reservation. Only gasoline, cigarettes, and quick stop grocery items are available on the Reservation.

Revised 6-87

Thompson plays bingo in Oneida

5/19/87 Press-Gazette photo by Ken Wesely

Governor visits center: Governor Tommy Thompson jokes with tribal members as he plays bingo at the Irene Moore Activity Center Monday night during a visit to the Oneida Reservation. Surrounding Thompson are, from the left, Purcell Powless, George Reed, Sandy Ninham and Alma Webster.

Tour of Oneido bingo session

Press-Gazette photo by Russ Kriwanek

Bingo tour: Ross O. Swimmer, assistant secretary for Indian affairs for the U.S. Department of the Interior, tours the Irene Moore Activity Center during a Sunday afternoon bingo session. Conducting the tour is Tribal Chairman Purcell Powless, right.

Top Indian official lauds Oneida efforts

Bingo critic praises use of funds for economic development

By Stephanie Reid
Of the Press-Gazette

A top U.S. Department of the Interior official toured the Oneida Indian Reservation Sunday and praised the Oneidas for using their bingo proceeds to spur the tribe's multimillion-dollar economic development.

Ross O. Swimmer, the department's assistant secretary for Indian affairs, has been an outspoken critic of tribal bingo operations.

■ BIA official defends his plan for education/B-1

The Associated Press quoted him in December of 1985 as saying that bingo was a poor idea economically and ethically. He also has said that the activity fails to encourage a work ethic and that reservations aren't the prime beneficiaries of bingo proceeds.

Swimmer's comments at the time prompted Oneida Tribal Chairman Purcell Powless to invite him to tour the reservation to see how the tribe has benefited from its bingo operation.

At a press conference at the Oneida Rodeway Inn following his tour, Swimmer said his comments on Indian bingo were largely misunderstood.

"I've asked the tribes to be careful that the bingo isn't looked at as a panacea to all Indian problems," said Swimmer, who met with officials from the Oneida Tribe and the National Indian School Board Association following the press conference.

Swimmer also said he was concerned about tribes establishing bingo facilities on trust land outside of the reservation, which could result in jurisdictional and law enforcement problems.

The Oneida bingo operations are conducted at the Irene Moore Activity Center, adjacent to the Rodeway Inn. Both are located on land in the Oneida reservation.

Swimmer, who is a member of the Oklahoma Cherokee Tribe, praised the Oneidas for turning their bingo proceeds into multimillion-dollar economic development.

Powless said he was pleased that Swimmer accepted his invitation.

"I was happy to afford Swimmer the opportunity to view our tribe and see

Please see Oneida/A-2

□ Oneida

how some of our enterprises operate, especially bingo," Powless said.

"I was satisfied that he realized the efforts of the Oneidas to make our reservation self-sufficient in its striving toward economic development," he said.

The Oneida bingo operation has had an annual $150 million economic impact on the surrounding communities, the tribe said.

Bingo proceeds were instrumental in the purchase of the Oneida One-Stop gas station and convenience store and the construction of the Rodeway Inn.

"There are just as many horror stories," Swimmer said. "But that's going to happen in any kind of business. Not every bingo operation is going to be successful, not every manufacturing company is going to be successful."

He said a case currently before the U.S. Supreme Court may have a significant impact on the tribal bingo control issue.

The court will decide whether the Cabazon and Morongo tribes of California can operate bingo and poker games without state or local control.

PREPARED STATEMENT OF SUSAN TOTENHAGEN AND AMY STADE, BEHALF OF THE SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

Mr. Chairman and members of the Committee, we are appearing before you as officers of the Shakopee Mdewakanton Sioux Commuity of Minnesota, to present the Community's views on the proposed Indian Gaming Regulatory Act. Like many other Indian tribes, the Community is opposed to the enactment of an Indian Gaming Regulatory Act, both as an invasion into the inherent sovereignty of Indian Tribes to regulate on-reservation gaming, and as unnecessary and intrusive federal regulation of Indian Gaming.

In light of the strong precedent established by various federal Indian Gaming cases, particularly California v. Cabazon Band of Mission Indians, there is no need for a federal act. Cabazon recognizes and gives weight to the important tribal and federal interests served through the promotion of qualified Indian Gaming in Indian Country. The promotion of Tribal self-sufficiency and economic development through an increased revenue base as well as increased employment opportunities for tribal members enhances the tribal and federal interests in promoting Indian gaming. Recognizing these strong federal and tribal interests, Cabazon held that states may not regulate Indian gaming which is not prohibited by federal law or otherwise criminally prohibited by state law, and upholds the Tribes' right to regulate such gaming.

Indian tribes, in the exercise of their inherent sovereignty, and consistent with the federal policy of promoting tribal self-government, have the right to regulate gaming in Indian Country. Like the power to tax, the power to regulate gaming derives from the Tribe's inherent authority, as sovereign, to control commerce and economic activity within their territory. The proposed Indian Gaming Regulatory Act is an unnecessary restriction upon this aspect of tribal sovereignty, and in this respect is itself inconsistent with Congress' own policy of promoting tribal self-government. Indian Tribes have shown that they are capable of regulating gaming activity within their reservation. The Shakopee Mdewakanton Sioux Community itself has an established gaming operation, which generates needed revenue, as well as provides substantial employment opportunities for the Community. The Community has been able to regulate its own gaming activity very well in the past, without need for a federal regulatory Act.

The proposed Federal Indian Gaming Regulatory Act has the effect of unnecessarily and unjustifiably restricting the right of tribal governments to make their own decisions with respect to the regulation of Indian Gaming. In light of the Cabazon precedent there is no need to so limit the regulatory jurisdiction and sovereignty of the tribes. Cabazon gives adequate protection from the assertion of state civil regulatory jurisdiction.

Moreover, the primary goals of the proposed legislation are to promote tribal economic development, self-sufficiency, and strong tribal government. The restrictions of the proposed legislation on the right of tribes to regulate on-reservation gaming do not serve to promote these goals any more than if there were no Federal Gaming Act at all. In fact, the goals of self-sufficiency and strong tribal government are more enhanced with no federal regulation, since in such a case tribal governments have more freedom to determine for themselves what is in their own best interest, and how they can best regulate gaming.

The stated purposes of the proposed Indian Gaming Regulatory Act are to provide a statutory regulatory basis to ensure that the tribe is the primary beneficiary of the gaming operation, to shield gaming from illegal influences, and to ensure that gaming is conducted fairly and honestly. All of these purposes may be equally accomplished without a federal act, through the exercise of tribal self-government. It has not been shown that Indian tribes are incapable of regulating gaming within their jurisdictions. By regulating their own games, tribes take responsibility for their own welfare, in their own way.

As for the purpose of shielding gaming from illegal influences, while this is obviously a legitimate concern, it has never been suggested that tribes themselves are unable to provide adequate protection against organized crime. In fact, the Court in Cabazon could discern no criminal involvement in the tribal gaming operations at issue. Although we obviously cannot speak for other tribes, we can assure the Committee that the Shakopee Mdewakanton Sioux Community is just as concerned with keeping organized crime out of Indian gaming as is the federal government. Moreover, the fact that the Secretary of the Interior must review and approve management contracts dealing with Indian gaming under 25 U.S.C. § 81 provides an additional safeguard against the infiltration of organized crime. Additional and more restrictive Indian gaming legislation is therefore not required.

Admittedly, the proposed Act has some noble goals, not the least of which are the promotion of tribal economic development, self-sufficiency, and strong tribal government. However, as mentioned previously, if one looks underneath these facially legitimate purposes, it is easy to see that the provisions of the proposed bills which restrict the decision making authority of tribes with respect to regulating Indian gaming undermine rather than further these goals. If Congress were serious in its attempt to promote tribal self-sufficiency and strong tribal government, it would give as much of the regulatory decision making authority as possible to the tribes. The goal of economic development would necessarily follow since the most important purpose of tribes in promoting gaming is always economic development as well as to raise governmental revenues. Taking the regulatory authority from the tribes is, in this sense, self-defeating. Such a divestment of the sovereignty of tribes to self-regulate gaming makes Congress' asserted goals in the Indian Gaming Regulatory Act illusory. Congress is certainly not promoting its goal of tribal self-government by passing the Indian Gaming Regulatory Act.

The other asserted purposes of the proposed Act are to ensure that the tribe is the primary beneficiary of the gaming operation, to shield gaming from illegal influences, and to assure that gaming is conducted fairly and honestly. It seems to us that the tribes are in a much better position to determine how they can best benefit from gaming activities within their jurisdictions. To the extent the proposed Act seeks to prohibit all forms of gaming unless the tribe has the sole proprietary interest therein, the Act imposes a pure socialistic form of government upon tribes, regardless of whether or not tribes choose for themselves that form of government. This is a significant and unreasonable limit upon the sovereign authority of tribes to regulate economic development within their jurisdictions. Just because a tribal government chooses to get out of the business of gaming and instead engage in a more traditional form of regulation and licensing of private gaming operations does not mean that the tribe is no longer benefitting from gaming. The benefits of increased employment opportunities, increased commercial development, and an enhanced tax base are just as prevalent. We are not advocating either a socialist or capitalist type of regulatory scheme. What we are advocating is the right of tribes to decide for themselves which regulatory scheme best suits their needs. Giving the regulatory authority to the tribes promotes strong tribal government and self-sufficiency. It cannot be said that taking such authority from the tribes promotes these policies. This is what is meant when we say the provisions of the proposed Act are self-defeating.

In short, the concept of inherent tribal sovereignty and the federal government's policy of promoting tribal self-government and self-sufficiency, weigh against the enactment of federal gaming legislation which would so restrict the authority of Indian Tribes over gaming within their territory. In light of the strong precedent of Cabazon and its progeny, there is no need for a federal act. Indian Tribes have the means and ability to regulate their own gaming activity under present law. The proposed Indian Gaming Regulatory Act is unduly restrictive and unnecessarily divests Indian tribes of their sovereignty. For these reasons, the Community opposses the proposed Indian Gaming Regulatory Act.

We would like to thank the Committee for the opportunity to appear and present the Shakopee Mdewakanton Sioux Community's views on this very important issue. We hope the Committee will favorably consider our views.

Susan Totenhagen
Susan Totenhagen, Chairperson
Shakopee Mdewakanton Sioux Community

Amy E. Stade
Amy Stade, Secretary/Treasurer
Shakopee Mdewakanton Sioux Community

SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

2330 Sioux Trail N.W., Prior Lake, Minnesota 55372
Tribal Office (612) 445-8900

OFFICERS
Susan Totenhagen
Chairman

Vice Chairperson

Amy E. Stade
Secretary/Treasurer

Resolution #6-3-87-004

WHEREAS: The General Council of the Shakopee Mdewakanton Sioux Community has the power under the Constitution and By-laws to promulgate resolutions governing the conduct of business in the Community; and,

WHEREAS: The General Council has taken note of the fact that legislation has been introduced in the Congress of the United States, which attempts to establish Federal standards and regulations for the conduct of gaming activities on Indian reservations and lands; and,

WHEREAS: The General Council of the Shakopee Mdewakanton Sioux Community believes it important for the Congress of the United States to be advised of the views of the Shakopee Mdewakanton Sioux Community;

NOW THEREFORE BE IT RESOLVED: That the General Council of the Shakopee Mdewakanton Sioux Community does not support regulatory legislation and does support tribal sovereignty, and that the Tribal Attorneys of Fredericks and Pelcyger are authorized by the General Council to prepare and present such testimony as they believe is in the best interests of the Shakopee Mdewakanton Sioux Community to the appropriate members of Congress and Congressional Committees; and,

BE IT FURTHER RESOLVED: that Susan Totenhagen, Chairperson, Amy E. Stade, Secretary-Treasurer, Cherie Crooks-Bathel, Lounge General Manager, Sonny Crooks, Palace General Manager, and the Tribal Attorney of Fredericks & Pelcyger are authorized and directed to travel to Washington, D.C. for the purpose of presenting such testimony and information to Congressional Committees and members of Congress and that expenses be paid out of Programs account.

CERTIFICATION

We hereby certify that the foregoing resolution was duly adopted by a vote of 15 yes, 0 no, and 10 abstentions and the chair not voting at a Special Meeting of the Shakopee Mdewakanton Sioux Community, a quorum being present, held on June 3, 1987 at the Shakopee Mdewakanton Sioux Community Center Building, Prior Lake, Minnesota.

Susan Totenhagen
Susan Totenhagen, Chairperson

Amy E. Stade
Amy E. Stade, Secretary-Treasurer

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PREPARED
STATEMENT OF ELVIN WILLIE, JR.
VICE-CHAIRMAN, WALKER RIVER PAIUTE TRIBE
BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
ON S.555 AND S.1303

July 10, 1987

The Walker River Paiute Tribe opposes the legislation proposed under S.555, S.1303, H.R.2507 and H.R.964 which govern gaming on Indian Reservations. It is our position that State regulation and intervention in Indian affairs, whether it be gaming or any other activity, is totally in contradiction to judicial case law, self-determination policy of the U.S. Government regarding Indian Tribes, and the historical right of Tribal self-government recognized by Congress and other branches of government.

Those provisions that authorize State intervention or regulation reverses Federal policy to the days when termination and abrogation of Indian treaty rights was being advocated.

Threat of Organized Crime

More than anyone else, our Tribe does not want organized crime involved with Indian gaming or any other reservation activity; and we, more than anyone else realize that our Tribal resources are not sufficient to effectively monitor large scale gaming activities.

For these reasons, if we were to establish a casino, Tribal regulations would call upon the assistance of the BIA and FBI for backgraound checks of all potential gaming licensees, and other assistance. Under our current activities, e.g., operating our Law Enforcement Program and licensing of a Youth Detention Wilderness Camp, we are already requiring full BIA and FBI background checks of the personnel involved. In addition, as a requirement to acquire a Tribal Liquor License, all vendors/businesses must first acquire a County Liquor License. These are restrictions imposed by the Tribe, by the official governing body of this reservation, not by mandates imposed from the outside. In the spirit of inter-governmental cooperation, we have come to rely on "other" resources to meet our needs based on our own initiative to impose these restrictions.

In the case of Indian Gaming, however, the states, in particular the State of Nevada, have not met with Indian Tribes to discuss inter-governmental cooperation or agreement in this area. We would welcome the use of State gaming enforcement resources to assist the Tribe in regulating gaming on our reservation upon our request, but to have this requirement imposed upon us, putting the State in a position of dictating and controlling Tribal regulatory activities, and treating Tribes in a paternalistic manner, are conditions that we find intolerable.

It is true the State of Nevada has had a longer experience in dealing with gaming regulation and we would like to take advantage of this experience; and more so; we would, in fact be more stringent in our regulation of gaming. As an example, our "Black Book" would not only contain those listed on Nevada's list, but also those recommended by the FBI, those indicted in cases in Kansas City, Chicago, New York or wherever organized crime figures have been charged with casino skimming, and those in any way affiliated with organized crime families as identified by the FBI, U.S. Justice Department, or other law enforcement agencies.

It causes us some uneasiness to review the history of gaming and organized crime in Nevada, from Bugsy Siegal to Anthony Spilotro, and to have the State of Nevada put in a position to control gaming on our reservation and to have State authorities fear gaming on Indian reservations make us wonder what their real intentions are. Perhaps as a requirement to acquire a gaming license on our reservation, we should require that applicants first get a New Jersey license based on Nevada's track record.

Tribal Self-Government

Enactment of this legislation will reverse the trend of the last twenty years, to recognize the status of Tribal governments on par with those of State governments. The Government-to-Government relationship as expressed by the current and recent Administrations would appear to be empty phrases or catchwords if Tribal governments are not allowed to exercise true governmental duties. To view Tribal governments as irresponsible, unsophisticated and unable to handle regulatory duties is to turn a blind eye to the development of Tribal governments. To be sure, many Tribes are unable to develop or administer complex regulatory schemes; but to uniformly impose gaming regulations or bureaucratic restrictions on all 390 Indian Tribes is to deny and make a mockery of the policy of Government-to-Government relationships with Indian Tribes

Conclusion

At the current time, our Tribe is not contemplating the development of casino operations on the Reservation nor are we researching the feasibility of such an enterprise. Our opposition comes mainly on the principles involved. The precedent that would be set of interfering in the internal affairs of Tribal governments, of not recognizing the sophistication of Tribal governments, is an issue to great to ignore. The enactment of such legislation can only be viewed by Indian tribes as a prelude to the return of the termination policies once espoused by the Government in the 50's. For these reasons, I urge you to oppose the passage of the Indian Gaming Bills as listed above.

May 22, 1987

The Honorable Daniel K. Inouye
Chairman
Select Committee on Indian Affairs
SH-722 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Inouye:

Last year, the Select Committee on Indian Affairs debated the issue of gambling on Indian lands, but procedural problems prevented the full Senate from acting on a compromise proposal before the end of the 99th Congress.

Our organizations, representing a large segment of the gaming industry, were deeply involved in this debate during the last Congress. After the Select Committee narrowly reported out legislation (H.R. 1920) in September of 1986, then Chairman Andrews announced that a further compromise would be sought before bringing a bill to the full Senate. In an effort to produce such a compromise that would protect both the rights of the tribes, the interests of the gaming industry and the legitimate concerns of the States concerning control of activity within their borders, we worked with both the Senate and House staff, tribal representatives and State officials to produce a compromise for full Senate consideration last fall. This compromise represented a consensus position among most groups, and likely would have been adopted by the full Senate and accepted by the House but for certain procedural problems that prevented its consideration in the waning days of the 99th Congress.

At the beginning of this year, we continued to refine the compromise in order to narrow differences and produce a bill which could receive the widest possible support from our organizations as well as from the tribes, state and local officials and other interested parties. This consensus-building process was completed in late January 1987 and is embodied in legislation introduced both by Chairman Inouye (S. 555) and by Congressman Tony Coelho (H.R. 964). Like all true compromise efforts, neither the tribes nor our organizations received one-hundred percent of what we were seeking. Nevertheless, the bills introduced earlier this year are acceptable to our organizations.

Efforts to pass these bills and solve the problems implicit with unregulated gaming on Indian lands were, of course, delayed as a result of the Supreme Court's decision in the Cabazon case which was handed down on February 25, 1987. The Cabazon case, in a nutshell, stands for the proposition that absent legislation from Congress, State control over unregulated gaming on Indian lands may not be possible, although this general proposition is fraught with numerous potential exceptions and caveats that make the prospect of further litigation, absent Congressional action, almost certain.

During the past Congress, the specter of a Supreme Court decision on Indian gaming was ironically both an impediment as well as a spur to Congressional action. Among some groups, there was a view -- misguided in our opinion -- that the Supreme Court would "solve" the issue of Indian gaming once and for all. This view was shared both by some Indian tribes who advocated no federal legislation on this subject as well as by others who were totally opposed to any form of Indian gaming and who blocked any reasonable legislation in the 99th Congress.

Our organizations have never believed that the Supreme Court would "settle" the issue of Indian gaming. From the inception of debate in the 99th Congress, we have consistently advocated the need for responsible legislation to address the serious questions of tribal rights, state control and the protection of the integrity of the gaming industry. It was this desire for balanced legislation which led us to participate in negotiations with the various parties last year and early this year, and it remains our position today. Now that the Cabazon decision has been handed down and sufficient time has elapsed to review that decision, we urge the Congress to adopt the compromise approach embodied in S. 555.

The legitimate concerns of Congress on the need to place reasonable controls over unregulated Indian gaming have not diminished as a result of the Cabazon decision; indeed, Congress should have more concern that this decision will accelerate the headlong rush of many tribes into the unchartered waters of high-stakes gaming as unscrupulous promoters approach tribes with promises of great wealth flowing from gambling. While Indian bingo has been a source of revenue for certain tribes, Congress correctly was concerned last year about the expansion of unregulated gaming into the more complex areas of parimutuels, casino gaming, etc. This concern should not be abated by the Cabazon decision.

Lest there be any doubt about the right of Congress to impose controls over unregulated gaming on Indian lands, the Supreme Court acknowledged such a role in the Cabazon case when the Court stated:

> "It is clear, however, that state laws may be applied to tribal Indians on their reservations if Congress has expressly so provided."

And further:

> ". . . the Federal Government has the authority to forbid Indian gambling enterprises."

Our organizations do not seek to forbid Indian gaming. We also resist the short-run financial reward of engaging as "management contractors" for unregulated Indian games run for the benefit of non-Indians who use the reservation lands as a enclave to escape State control that would otherwise apply if such activities were held on non-Indian lands. In the long-run, we fear that such unregulated activity will only bring scandal and disrepute to the gaming industry we have sought to protect over the years.

Instead, we believe that the compromise embodied in S. 555 represents the best approach to the problem. It allows Indian bingo to continue without change, thus protecting actual and future games. In the area of "hard-core" gaming such as parimutuels and casino gaming, however, it insists that if the tribes wish to engage in such activity, that it come under the control of the States who already have a wealth of experience in regulating these complex games. In providing for State control over "hard-core" gambling, the compromise is sensitive to the philosophy of Indian "sovereignty" and goes to lengths to insure that unless and until the tribes wish to engage in such gaming, they need not assent to State control. Finally, the compromise protects both the tribes from unfair discrimination that would violate the equal protection clause of the Constitution, as well as the States from actions that would violate the spirit of the compromise.

In short, the Chairman's bill is a true compromise. We are not entirely happy with its provisions, and neither are the tribes. While some tribes believe that the Cabazon decision has changed the political landscape and that the compromise no longer has attraction for them, we believe that Congress must look beyond the parochial aspects of the individual interests in this issue and act to balance the competing rights, duties, and responsibilities of the tribes, States and gaming industry. In doing so, there is no way to make all parties completely happy, but there is a way to insure that all parties are protected, and that the public interest is served. We urge the Committee to act favorably on S. 555.

AMERICAN HORSE COUNCIL

H. L. Cashen II
AMERICAN GREYHOUND TRACK
OPERATORS ASSOCIATION

James E. Ritchie
NEVADA RESORT ASSOCIATION
GAMING INDUSTRY ASSOCIATION
OF NEVADA, INC.

R. O'Neill
NATIONAL ASSOCIATION OF
JAI ALAI FRONTONS, INC.

THE JICARILLA APACHE TRIBE

P. O. BOX 507 • DULCE, NEW MEXICO 87528

1987 JUN 29 PM 4 31

June 24, 1987

Senator Daniel K. Inouye, Chairman
Senate Select Committee on Indian Affairs
Room 722, Hart Office Building
Washington, DC 20510

RE: Position of the Jicarilla Apache Tribe on Federal Legislation to Regulate Gaming on Indian Lands (H.R. 2507 and S. 1305)

Dear Senator Inouye:

The Jicarilla Apache Tribe has long been a proud and independent people. The ability of the Tribe, like any other body of people to remain independent rests largely upon its economic independence. The federal policies of the last twenty years have been directed towards furthering economic self-sufficiency and self-determination of Indian tribes. The Jicarilla Apache Tribe strongly endorses these policies and has steadily embarked upon programs designed to achieve those ends. The recognition and re-enforcement of these policies was stated by President Reagan in his 1983 Presidential Statement on Indian Policy: "It is important to the concept of self-government that tribes reduce their dependence on federal funds by providing a greater percentage of the cost of their self-government." 19 Weekly Comp. Pres. Doc. (Jan. 24, 1983). The United States Supreme Court has reconfirmed the importance of preserving the freedom to Indian tribes to engage in economic activities of their own choosing--including tribally authorized and regulated bingo, as well as other forms of gaming. California v. Cabazon Band of Mission Indians, ______ U.S. ______ (1987).

The Jicarilla Apache Tribe sees absolutely no need for federal legislation controlling and regulating tribal gaming. However, if federal legislation is to evolve then the goals and mechanisms within that legislation must be consistent with promoting tribal economic development, self-sufficiency and strong tribal government. The Jicarilla Apache Tribe objects to any provisions in federal Indian gaming legislation which would allow the states, directly or indirectly, to exercise control over those gaming activities. State after state has made it very clear that they each intend to engage in gaming activities in order to raise revenues for state government. It would be an impermissible intrusion on tribal sovereignty to allow the states to utilize their governmental authority to regulate, directly or indirectly, gaming activities on Indian reservations for the purpose of promoting state run games.

Lastly, it is our understanding that hearings may be held by your committee later in the year in the Southwest. We respectfully request that the Jicarilla Apache Tribe be allowed time to make a presentation at such hearings.

Thank you very much for your concern and continued support for Indian economic self-sufficiency and self-determination.

Sincerely,

Leonard Atole

Leonard Atole
President

CONFEDERATED TRIBES
OF
COOS, LOWER UMPQUA & SIUSLAW INDIANS

455 S. 4th, P.O. Box 660 • Coos Bay, OR 97420 • (503) 267-5454

CHIEF EDGAR BOWEN
CHAIRMAN

July 7, 1987

The Honorable Daniel K. Inouye, Chairman
Senate Select Committee on Indian Affairs
Washington, DC 20510

Re: Federal Indian Gaming Legislation

Dear Senator:

On behalf of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, I would like to express our concern over the proposed legislation (H.R. 2507, H.R. 964, S. 555, and S. 1303) intended to regulate gaming on tribal lands/reservations.

The proposed legislation is a gross infringement upon tribal sovereignty. These Tribes are adamantly opposed to any legislation which would delete tribal authority and relinquish tribal sovereign immunity to another power.

Tribal sovereignty is not to be make light of, even when events make it economically beneficial to the United States government to do so. Economic development and self-determination are inseparable. And both are hinged upon sovereignty.

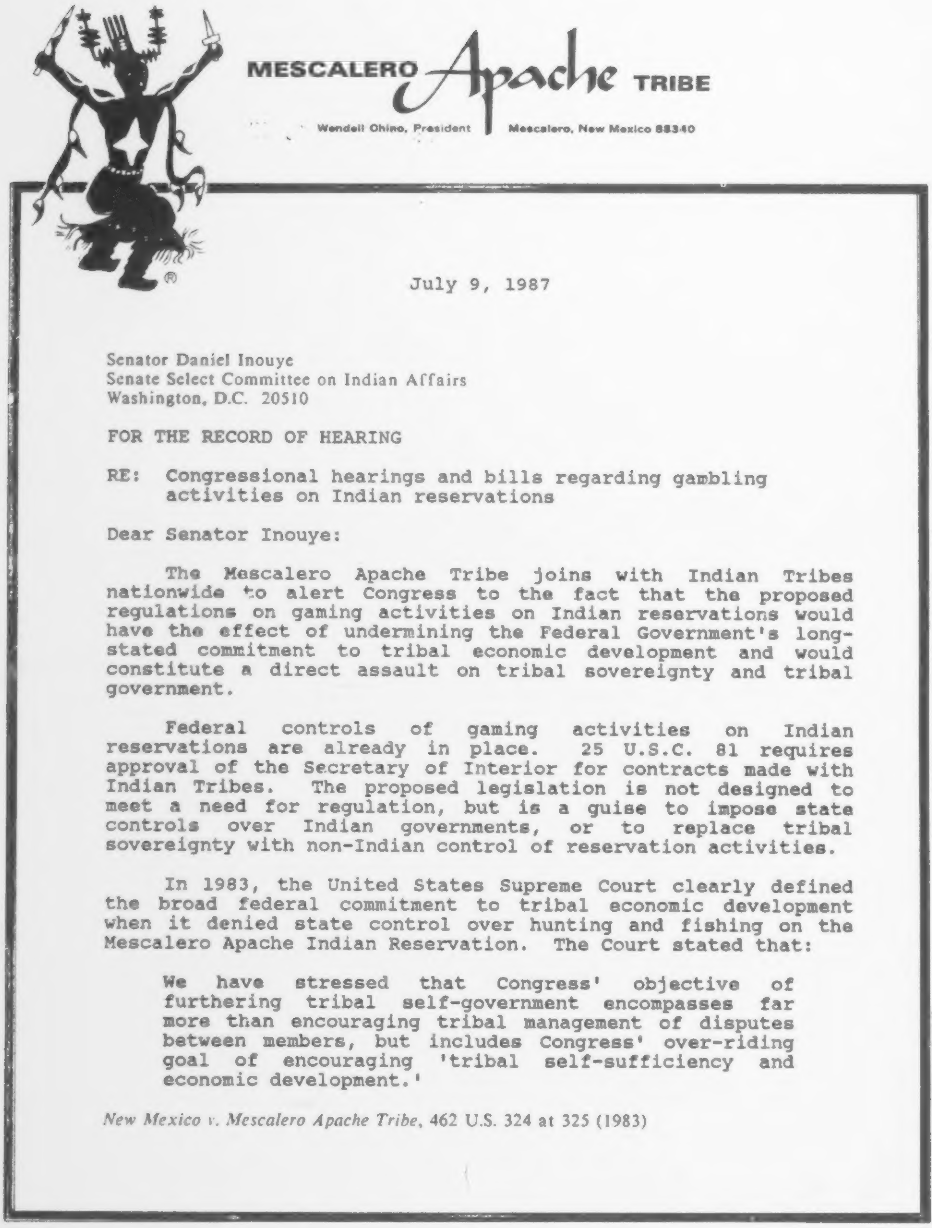
These Tribes will not sit silently and allow the meager but positive steps forward for tribes be wiped away by discriminatory taxation legislation.

Walk softly on our Mother Earth,

Edgar A. Bowen

Edgar A. Bowen
Tribal Chief/Chairman

cc: Senator Mark O. Hatfield
Senator Bob Packwood
Representative Morris K. Udall
Representative P. DeFazio
Representative L. AuCoin



MESCALERO Apache TRIBE
Wendell Chino, President
Mescalero, New Mexico 88340

July 9, 1987

Senator Daniel Inouye
Senate Select Committee on Indian Affairs
Washington, D.C. 20510

FOR THE RECORD OF HEARING

RE: Congressional hearings and bills regarding gambling activities on Indian reservations

Dear Senator Inouye:

The Mescalero Apache Tribe joins with Indian Tribes nationwide to alert Congress to the fact that the proposed regulations on gaming activities on Indian reservations would have the effect of undermining the Federal Government's long-stated commitment to tribal economic development and would constitute a direct assault on tribal sovereignty and tribal government.

Federal controls of gaming activities on Indian reservations are already in place. 25 U.S.C. 81 requires approval of the Secretary of Interior for contracts made with Indian Tribes. The proposed legislation is not designed to meet a need for regulation, but is a guise to impose state controls over Indian governments, or to replace tribal sovereignty with non-Indian control of reservation activities.

In 1983, the United States Supreme Court clearly defined the broad federal commitment to tribal economic development when it denied state control over hunting and fishing on the Mescalero Apache Indian Reservation. The Court stated that:

> We have stressed that Congress' objective of furthering tribal self-government encompasses far more than encouraging tribal management of disputes between members, but includes Congress' over-riding goal of encouraging 'tribal self-sufficiency and economic development.'

New Mexico v. Mescalero Apache Tribe, 462 U.S. 324 at 325 (1983)

It is essential for tribal self-sufficiency that control over economic development on reservations remain in tribal governments. The Mescalero Apache Tribe, like many other tribes nationwide, has successfully operated major business activities for years. The Mescalero Apache Tribe has successfully operated a major ski facility, a major resort complex, and a timber operation. These and other successful Indian businesses are more than adequate evidence to override the false assumptions behind the current bills and testimony that Indian governments are not capable of running Indian businesses.

There is no basis for assuming that criminal infiltration of Indian businesses will result from Indian governmental control of gaming activities on Indian lands. This has not proved the case in the past, and the successful conduct of tribal enterprises over many years defeats this unsupported notion. The records of the various states do not indicate any greater capability to manage gaming operations than the capability demonstrated by Indian governments. Justice and equity require that the tribes be given the same opportunities for improving economic conditions as are allowed to the states.

Any general legislation which would apply to all Indian tribes with no consideration for a particular tribe's demonstrated ability to control and regulate its business activities would be grossly unfair and would unnecessarily interfere with economic improvement. The Mescalero Apache Tribe has demonstrated its ability to develop economically and to regulate its own businesses. The Tribe should not be deprived of its continuing economic ventures, and should be exempt from any additional regulations which can only hinder its successful and well-managed enterprises.

The issue is economic development for Indian tribes. The Mescalero Apache Tribe, and many other Indian tribes, are just now developing successful economic enterprises. To permit state supervision of gaming activities would invite state regulation of all activities on Indian reservations. This has been the history of state attempts to encroach upon tribal governmental control in the areas of hunting and fishing regulations, child welfare and placement, civil and criminal jurisdiction on the reservations, and many more areas which have an immediate and direct impact on tribal governments' attempts to protect and improve the welfare and economic condition of the Indian people. State regulation of gaming activities on Indian reservations would be the "foot in the door" of the persistent efforts of states to encroach on tribal sovereignty, and state regulation would be fatal to tribal economic development.

Economic opportunities are few on Indian reservations. The income level on Indian reservations is far below the national average. To create an unwanted and unwarranted new commission to regulate gaming on Indian reservations, and then to require a substantial contribution from those economic activities, would be grossly unfair. In addition, the taxation of income from gaming operations, if passed through to tribal members, would be oppressive. A thorough study should be made before any additional taxes are imposed upon an already economically depressed segment of our society.

Another proposal which would undermine tribal sovereignty is the referendum concept. Indian governments are elected, representative governments. The concept of a referendum to approve gaming activities on Indian reservations is unsound. Such a referendum would be devisive and would undermine the power and authority of tribal governments in exercising their lawful authority to promote and improve the economic welfare of Indian people.

Supervision by the Assistant Secretary of Interior for Indian Affairs, as presently provided by statute, and law enforcement efforts on Indian reservations which equal law enforcement activity on non-Indian land are all that are required to assist tribal governments in the control of gaming activities on Indian reservations. Deep concern for potential criminal activities on Indian reservations is unrealistic. Adequate laws exist for control of any criminal activities.

Additional regulation of gaming activities on Indian reservations is not only unnecessary, it would effectively undermine federal and tribal efforts to improve economic conditions for Indian people, and would greatly damage tribal sovereignty. Tribal governments have shown that they are fully capable of handling their business activities. Federal supervisory controls are in effect, and the law enforcement system is already in place. The existing governmental pattern should be enhanced and permitted to operate.

I ask that you call me if you feel I can be of any assistance to you.

Very truly yours,

Wendell Chino

Wendell Chino, President

Pyramid Lake Paiute Tribal Council
Post Office Box 256
Nixon, Nevada 89424
Telephone: (702) 574-0140, 786-5626

June 18, 1987

Chairmam Inouye
Attn: Alan Parker
Senate Select Committtee on Indian Affairs
838 Senator Hart Office Building
2nd St. and Constitution Ave., N.E.
Washington, D.C. 20510

Dear Senator Inouye:

In reference to the two bills proposed by Senator Inouye and Congressman Udall, please find enclosed a resolution of the Pyramid Lake Paiute Tribe's opposition to the adoption of the two bills.

Should you have any questions regarding the resolution, please do not hesitate to call me.

Sincerely

Joseph H. Ely

Joseph H. Ely
Tribal Chairman

Resolution No. P.L. 61-87

RESOLUTION OF THE PYRAMID LAKE PAIUTE TRIBE OF THE PYRAMID LAKE INDIAN RESERVATION
NIXON, NEVADA

Whereas, the Pyramid Lake Paiute Tribal Council is the elected governing body of the Pyramid Lake Paiute Tribe; and

Whereas, Congress is now considering two Indian Gaming Bills S555 and S1303; hearings are to be held on June 18, 1987; and

Whereas, At the present time the Pyramid Lake Paiute Tribe has no interest in gambling operations, however, the Council is opposed to both bills because S555 mandate that Class III gaming is banned unless tribes negotiate with the State, and S1303 allows tribes to enter into gaming operations while allowing for regulation using State Law; and

Let It Be Further Resolved that the Pyramid Lake Paiute Tribal Council does not support S555 and S1303 as both bills undermine Tribal Self-Determination and sovereignty.

CERTIFICATION

It is hereby certified that the foregoing resolution of the Pyramid Lake Paiute Tribal Council, governing body of the Pyramid Lake Paiute Tribe, composed of 10 members of whom 10 constituting a quorum were present at meeting duly held on June 12, 1987, was adopted by the affirmative vote of 10 for and 0 against, pursuant to authority contained in the Constitution and By-Laws of the Pyramid Lake Paiute Tribe.

Carolyn Harry

Carolyn Harry, Tribal Secretary
Pyramid Lake Paiute Tribe

UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA
2450 SO. MUSKOGEE AVENUE, TAHLEQUAH, OKLAHOMA 74464

CHIEF
John Hair
VICE-CHIEF
Louie Griffin

SECRETARY
Austin Ketcher
TREASURER
John Ross, Jr.

OCT. 3, 1950

July 7, 1987

Senator Daniel K. Inouye, Chairman
Senate Select Committee on Indian Affairs
Washington, D. C. 20510

Dear Senator Inouye,

I want to go on record as opposing the enactment by the Congress of S.-555, S.-1303, HR-2507 and HR-964 or any other legislation that would impose upon Indian tribes federal standards and regulations governing the conduct of gaming activities on Indian lands. I view the proposed gaming bills as a federal abrogation of the inherent tribal sovereign authority to govern their own affairs.

Indian tribes have been successful in their gaming operations and regulations under tribal laws. These activities have been free from the interference of organized crime for over 20 years.

For the Federal Government to impose bureaucratic control over what has become successful business activities would constitute a derogatory interference with tribal self-government and a breach of faith by the Federal Government.

Why impose on us, without our consent these controls? I ask this especially in view of the miserable failure of the Federal Government thru the BIA in carrying out their Trust Responsibility.

I would greatly appreciate your help in this matter.

Sincerely,

John Hair

John Hair, Chief
United Keetoowah Band of
Cherokee Indians in Oklahoma

American Institute of Certified Public Accountants
1455 Pennsylvania Avenue, N.W., Washington, DC 20004-1007, Telephone (202) 737-6600

AICPA100
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June 19, 1987

The Honorable Daniel K. Inouye
Chairman
Select Committee on Indian Affairs
United States Senate
838 Senate Hart Office Building
Washington, D.C. 20510

Dear Chairman Inouye:

The American Institute of Certified Public Accountants (AICPA) is the national professional organization which represents approximately 250,000 CPAs in public practice, industry, government and education. The AICPA, through the efforts of volunteers, is devoted to developing standards for audits and other services provided by CPAs, providing educational and guidance materials to its members, administering the Uniform CPA Examination, and monitoring and enforcing compliance with the profession's technical and ethical standards. All of these activities are undertaken with the objective of serving the public interest as well as our members.

The purpose of this letter is to suggest a minor technical revision relating to S. 555 and S. 1303, legislation to establish federal standards and regulations for the conduct of gaming activities on Indian reservations and lands. S. 555 and S. 1303 each include language requiring independent audits which is not technically correct.

Specifically, the Tribal Gaming Ordinances section of S. 555, section 11, includes language pertaining to independent audits. Section 11(C), in order to be technically correct, requires the insertion of the bracketed material below:

> (C) annual outside independent audits of the [financial statements of the] gaming [activity conducted in accordance with generally accepted auditing standards] shall be obtained by the Indian tribe and made available to the Commission;

Similar changes are required for section 11(b)(3) of S. 1303, as follows:

> (3) annual outside independent audits of [financial statements of the] gaming activity [conducted in accordance with generally accepted auditing standards] will be obtained by the Indian tribe and made available to the Commission;

As you can see, the suggested changes are technical in nature, but would result in the required audits being performed in accordance with generally accepted auditing standards. Therefore, we request that the suggested changes be incorporated into any such legislation which might be reported from the Committee. We are also writing to Senator Daniel Evans and Senator John McCain, so that they will be advised of our request.

I would be happy to answer any questions you might have about this matter.

With sincere regards,

Joseph F. Moraglio, CPA
Director
Federal Government Division

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July 8, 1987

Senator Daniel Inouye
United States Senate
Select Committee on Indian Affairs
Washington, D.C. 20510-6450

RE: Indian Gaming Regulations Act S-1303
Our File: 115-026-71-053

Dear Senator Inouye:

As general counsel for the Omaha Tribe of Nebraska, I am writing this letter to address the concerns of the Tribe with regard to the proposed Indian Gaming Regulation Act (hereinafter "S-1303"). Further, I am requesting that this communication be made part of the Congressional Record arising out of the hearings that were held on June 19, 1986, regarding S-1303. As you know, S-1303 has the primary purpose of establishing federal standards and regulations which would limit the ability of Tribes to engage in or license gaming activities in Indian Country. Consequently, on behalf of the Tribe, I will review S-1303 and address the Tribe's concerns:

Sec. 4: Makes it unlawful to engage in gaming activities on any lands acquired by the Secretary of Interior under its trust responsibility after the date of enactment of S 1303 if the lands are located outside the boundaries of a Tribe's reservation or are not contiguous to such reservation with certain exceptions.

Comment: The Omaha Tribe of Nebraska (hereinafter "OTN") finds this section objectionable. As you know, states and municipalities throughout the United States are engaging in gaming activities. There is no reason to limit an Indian tribe from acquiring property outside of its reservation boundaries, place the land in trust to engage in gaming activities if the procedural safeguards are met which will ensure well-run gaming activities. This section is directed to limiting the competition that a Tribe would pose to a non-Indian gaming facility.

Sec. 5: This section establishes, within the Department of Interior, a commission to be known as the National Indian Gaming Commission. The OTN recognizes that gambling must be regulated and requests that the Sec. 5 be thoroughly reviewed so that it will not be affected by partisan politics.

Sec. 7: Section 7 delegates specific powers to the Commission.

Comment: The OTN seriously objects to any assessment being levied on tribal gaming activities. The budget of the Commission should be fully and completely funded without burdening tribal gaming activities. Further, the tribe further suggests that Sec. 19 be deleted in its entirety.

Sec. 10: This section sets forth the jurisdiction of the gaming activities.

Comment: The OTN strenuously objects to and requests that the provisions relating to any control or relationship to state law be deleted. This may also be interpreted as prohibiting a tribe from engaging in gaming which is located within a state that prohibits gambling. Tribes should be allowed to engage in gaming without a form of ratification by a state.

Sec. 11: Sec. 11 allows a Tribe to engage in Class II gaming after the Tribe has adopted an ordinance which is approved by the Commission. Further, the bill limits net revenues from tribal gaming activities and prevents them from being used for any purpose other than tribal governmental operations or programs, general welfare of the Tribe and its members or tribal economic development. The Tribe objects to any limitation upon the use of revenues arising out of tribal gaming activities.

Further, the Tribe objects to that portion of Sec. 11(c) which prevents a Tribe from licensing an individual if the individual would not be eligible to receive a state license. Further, Sec. 11(e)(2)(ii) allows for evidence to be taken with regard to the reputation. Reputation is far too ambiguous to be allowed as a objective standard regarding the conduct of a gaming activity.

Sec. 12: This section regulates the conduct of Class III gaming. Again, the Tribe requests that any reference or authority to engage in Class III gaming which is based upon state law be deleted. The tribes have traditionally been free from state regulation and as of this point there is no reason to require Indian gaming activity be related to permissible state gaming activity. Finally, Sec. 12(f)(1) should be deleted.

Sec. 14: This section allows the Commission to review management contracts and ordinances. The OTN strongly suggests that all management contracts and arrangements made prior to the adoption of the Indian Gaming Regulatory Act be allowed to continue.

Sec. 19: This section authorizes assessments to be made by the Indian Gaming Commission.

Comment: Delete Sec. 19.

Sec. 20: This section authorizes initial funds to operate the Commission.

Comment: The Commission should be totally funded by funds which are not in any way related to assessments of tribal gaming activities.

Sec. 21: This section defines gaming.

Comment: The classifications of gaming should in no way relate to the prohibitory/regulatory distinctions of state law. Tribes should be allowed to engage in any gaming activity upon showing that the gaming activity can be controlled without the interference of criminal activity.

Finally, S-1303 provides Indian Tribes the opportunity to generate significant revenue to further economic self-sufficiency. The fact that the United States has not done enough to ensure economic self-sufficiency and now to propose legislation which would prevent or severely restrict the ability of tribes to engage in revenue generating enterprises for long-term economic development is unconscionable.

Sincerely,

John M. Peebles

KEWEENAW BAY INDIAN COMMUNITY

1987
TRIBAL COUNCIL

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1987 JUL 11 PM 3:30

July 7, 1987

The Honorable Daniel K. Inouye, Chairman
Senate Select Committee on Indian Affairs
Washington, D.C. 20510

Dear Denator Inouye:

The Keweenaw Bay Indian Community Tribal Council re-affirms its opposition to any legislation to regulate activities on Federal Indian Reservations. By proposing any kind of legislation to regulate gaming by Tribes, you are implying that we are not able and not competent to self-govern. This again is contradictory to the President's position of government-to-government relations and self-determination.

The United States Supreme Court confirmed the fact that Indian Tribes have the right to conduct gaming activities within their jurisdiction. The intent of such legislation is to regulate. The question is, for who's benefit? Indian Tribes have demonstrated responsible conduct in the management of tribal affairs. There hasn't been a single incident of infiltration of organized crime on any of the 390 Indian reservations.

We are asking that testimony from Indian Tribes be given fair consideration. Historically, decisions, legislation and policies made by the U. S. Legislative Branch affecting Indians and Indian Tribes have been paternalistic. This seems to be the case again in deciding "what's best for Indians."

Sincerely,

Mark H. Perrault

Mark H. Perrault
Chairman

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1987 JUN 29 PM 4:32

State of California

Office of the Attorney General
John K. Van de Kamp
Attorney General

June 24, 1987

Honorable Daniel K. Inouye
Chairman, Select Committee
  on Indian Affairs
SH-722 Hart Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Inouye:

INDIAN GAMING REGULATORY ACT

I write in support of S. 555 and H.R. 964, and in opposition to H.R. 2507.

S. 555 and H.R. 964 should meet the desires of Indian tribes to become more independent and self-supporting -- while answering the concerns of law enforcement that Indian gambling operations would be infiltrated by criminal elements. On the other hand, H.R. 2507 would increase the spread of commercial gambling and the concomitant danger of criminal infiltration.

Proliferation of gambling activities on Indian reservations in recent years has caused concern among law enforcement agencies. Last year, my office successfully prosecuted a case on facts indicating an individual linked to organized crime was running an illegal skimming operation in his position as manager of a bingo parlor located on an Indian reservation.

California v. Cabazon Band of Mission Indians (1987) ___ U.S. ___ [94 L.Ed.2d 244] established that California and other Public Law 280 states cannot regulate bingo and card parlors otherwise permitted under state law on Indian reservations. Although the question was not presented, the opinion also suggests that the states cannot regulate other forms of permitted gambling such as lotteries and parimutuel betting. Grounded on the preemption doctrine, the opinion holds that states may not regulate gambling on Indian reservations, and that ". . . the Federal Government has the authority to forbid Indian gambling enterprises." (Id., at p. 262.) While the opinion makes clear that Congress may regulate gambling on Indian reservations, Congress has not passed any federal legislation and, thus, gambling on Indian reservations is now virtually unregulated.

Regulation is badly needed. A patchwork of nearly 150 separate "Indian Country" regions can be found in Arizona, California and Nevada alone. The potential for gambling activities in open violation of state criminal laws and regulatory measures governing the gaming at these locations is of grave concern to local law enforcement. Lucrative gambling operations attract organized crime. The potential for skimming and laundering is enormous in such cash business. These are legitimate, and traditional, state concerns.

Historically, the states have had the primary responsibility for establishing and enforcing public policies regarding liquor and gambling because these matters have such a particularly localized impact. As the New Mexico Attorney General testified before the Senate Select Committee on Indian Affairs on June 17, 1986, Indian gambling is not a tribal sovereignty issue. To the extent that such gambling is contrived to bring nontribal members to the reservation -- to avoid state law -- its impact is almost exclusively off the reservation.

Distinctions between competing legislation in this subject area are particularly important. Though the regulation of bingo on reservations would not be subject to state gambling laws in any of the bills, the provision of each for a federal commission to license and regulate games should reduce the danger of infiltration by criminal elements.

However, H.R. 2507 would also permit other forms of commercial gambling under federal control. S. 555 and H.R. 964 would prohibit such gaming except as permitted and regulated by the states. We believe that Class II gambling should be under the control of a strong federal commission and that Class III gambling should be prohibited absent the state's decision to allow such activity. We feel it is important to prohibit Class III gaming except as permitted and regulated by the states because we fear that budget and personnel limitations will not permit effective regulation by the federal commission.

High-stakes bingo, no matter how well regulated, presents a risk of criminal infiltration. That risk is magnified if other forms of commercial gambling are conducted outside of state control. The compromise tendered by S. 555 and H.R. 964 meets the interests of the Indian tribes while alleviating the law enforcement concerns created by H.R. 2507.

Very truly yours,

John K Van de Kamp

JOHN K. VAN DE KAMP
Attorney General

A.J.R. 47

ASSEMBLY JOINT RESOLUTION NO. 47--COMMITTEE ON
GOVERNMENT AFFAIRS

JUNE 16, 1987

Declared an emergency measure under the constitution

SUMMARY--Urges Congress to authorize states to regulate all gaming on Indian land except bingo and traditional Indian games. (BDR R-2328)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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EXPLANATION--Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

ASSEMBLY JOINT RESOLUTION--Urging Congress to authorize the states to regulate all gaming on Indian land except bingo and traditional Indian games.

WHEREAS, State and local regulation of public gaming is necessary to prevent the attraction of organized crime and other unsavory elements; and

WHEREAS, Public support for gaming is based upon the comprehensive regulation of that activity by state and local authorities; and

WHEREAS, The State of Nevada has more than 50 years of experience and acquired expertise in licensing and otherwise regulating public gaming; and

WHEREAS, The various states have sufficient experience and expertise to regulate public gaming satisfactorily and in a more efficient manner than the Federal Government; and

WHEREAS, The fact that public gaming is currently allowed on Indian land in an unregulated manner threatens the welfare of the Indian tribes and of the public as a whole by permitting organized crime and other unsavory elements to proliferate in that unregulated setting; and

WHEREAS, The operation on Indian land of slot machines, mechanical gaming devices or mechanical-electrical video gaming devices, whether new forms of games or facsimiles of existing forms, are essentially alike and present the same threat to the public welfare; and

WHEREAS, A recent decision of the Supreme Court of the United States clarifies the status of the law that, absent Congressional action, public gaming on Indian land will remain unregulated; and

WHEREAS, Recent Congressional debate appears to have resulted in a consensus that the forms of gaming other than bingo and traditional Indian games on Indian land should be subject to stringent regulation; and

WHEREAS, The problem presented by unrestricted gaming on Indian land can only be resolved by permitting the application of the laws and regulations of each state where that gaming is conducted; now, therefore, be it

RESOLVED BY THE ASSEMBLY AND SENATE OF THE STATE OF NEVADA, JOINTLY, That the Legislature of the State of Nevada hereby urges the Congress of the United States to enact legislation to authorize the states to regulate, without permitting unfair discrimination, the operation of games other than bingo and traditional Indian games on Indian land; and be it further

RESOLVED, That the Legislature urges the Congress of the United States to authorize the states to prohibit the operation on Indian land of slot machines, mechanical gaming devices and mechanical-electrical video gaming devices, whether new forms of games or facsimiles of existing forms; and be it further

RESOLVED, That copies of this resolution be transmitted by the Chief Clerk of the Assembly to the Vice President of the United States as presiding officer of the Senate, the Speaker of the House of Representatives and the members of the Nevada Congressional Delegation; and be it further

RESOLVED, That this resolution becomes effective upon passage and approval.